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Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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COMMITTEE AGAINST TORTURE

Fourth session

SUMMARY RECORD OF THE 43rd MEETING

Held at the Palais des Nations, Geneva,
on Monday, 23 April 1990, at 10.30 a.m.

Acting Chairman: Mr. MARTENSON (Under-Secretary-General for Human Rights)

Chairman: Mr. VOYAME

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GE.90-12029/1863B

The meeting was called to order at 10.50 a.m.

OPENING OF THE SESSION BY THE ACTING CHAIRMAN (item 1 of the provisional agenda)

1. The ACTING CHAIRMAN said that the constant increase in the number of States parties to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and in those which had accepted its optional provisions bore witness to the keen interest of the international community in combating torture throughout the world and implementing the provisions of the Convention.

2. Since the Committee's third session in November 1989, another four States from different regions, namely, Guatemala, New Zealand, Paraguay and Somalia, had become parties to the Convention, bringing the total number of parties to 52. In addition, New Zealand had made the declarations under articles 21 and 22 of the Convention, bringing the total number of declarations under articles 21 to 24 and the number under articles 22 to 23.

3. However, a large number of States had not yet acceded to that fundamental human rights instrument, even though every year the General Assembly and the Commission on Human Rights urged all States which had not yet done so to become parties to the Convention as a matter of priority and to consider the possibility of making declarations under articles 21 and 22 of the Convention.

4. In resolution 44/144 of 15 December 1989 relating to the status of the Convention against Torture, the General Assembly had welcomed the development by the Committee against Torture of an effective system of reporting on the implementation of the Convention by States parties, and especially its decision to revise its general guidelines for the submission of initial reports by States parties. The Assembly had also noted with appreciation the adoption by the Committee of its rules of procedure; it had welcomed the exchange of views between the Committee and the Special Rapporteur of the Commission on questions relating to torture and requested that the exchange should be continued. The summary records of the Third Committee of the Assembly pertaining to the discussion of the annual report of the Committee, in accordance with article 24 of the Convention, as well as the text of Assembly resolution 44/144, were brought to the attention of members of the Committee so as to enable them, following the established practice of other treaty bodies, to consider the Assembly's follow-up action on their work.

5. The Third Committee had also considered the report of the Secretary-General on the activities of the United Nations Voluntary Fund for Victims of Torture, established by the General Assembly in 1981. It would be noted that the amount of contributions received from the various countries was steadily growing and had accordingly enabled the Board of Trustees to finance therapy and rehabilitation projects for torture victims all over the world. The contributions received by the Board had amounted to more than $US 730,000 for 1989 alone. The Board, which met annually for one week, already had a heavy programme of work for its next session since, at the beginning of April, 19 new projects and 4 new proposals concerning old projects were awaiting consideration. The Board's next session had been initially scheduled for the end of April 1990, which would have been a timely occasion to resume the dialogue with the Committee initiated in 1989.

Unfortunately, for technical reasons, the session had had to be postponed until the week of 11 to 15 June 1990. Any possibility of resuming the dialogue between the Board and the Committee would, however, be explored and brought to the notice of the Committee in due time.

6. Other issues dealt with by the General Assembly and the Commission on Human Rights at their most recent sessions, which were directly relevant to the activities of the Committee were those relating to the effective implementation of international instruments on human rights, including reporting obligations and the functioning of bodies established under such instruments. The Committee would be able to consider the main reports prepared on those issues and the relevant resolutions adopted by the Assembly and the Commission, and express its views on the various proposals for the co-ordination and rationalization of activities relating to mechanisms for monitoring the implementation of human rights instruments. Because of the increase in the number of those instruments and the growing complexity of their monitoring mechanisms, there was a need for enhanced co-ordination and rationalization of related activities.

7. A series of recommendations on that subject had already been adopted: General Assembly resolution 44/135 of 15 December 1989 thus invited persons chairing human rights treaty bodies to maintain communication and dialogue with each other on common issues and problems and, to that end, requested the Secretary-General, within existing resources, to convene a meeting of persons chairing treaty bodies. That meeting was scheduled for the end of September 1990. In the same resolution, the Assembly invited treaty bodies to give priority attention to identifying possible technical assistance projects when reviewing the periodic reports of States parties. In addition, the Commission on Human Rights, in the most recent of its resolutions on advisory services in the field of human rights (resolution 1990/58 of 7 March 1990), had invited the competent United Nations bodies, such as the Committee against Torture, to make suggestions and proposals for the implementation of advisory services.

8. Among the most recent achievements of the United Nations in the field of human rights, special mention should be made of the adoption by the General Assembly, at its previous session of two new international instruments related to the question of torture and other cruel, inhuman or degrading treatment or punishment, namely, the Convention on the Rights of the Child and the Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at the abolition of the death penalty. The Convention on the Rights of the Child had been opened for signature on 26 January 1990. At present, 76 States had signed and 3 had ratified the Convention. On the basis of the rapidly increasing number of signatures and ratifications, it was anticipated that the 20 ratifications required for the entry into force of the Convention would be reached within a year and that the committee established pursuant to the Convention would be able to start work shortly thereafter. The Second Optional Protocol had already been signed by 12 States and would enter into force as soon as 10 States had deposited their instruments of ratification.

9. The Committee would also be interested to know of the decision taken by the General Assembly, in resolution 44/156 of 15 December 1989, to request the Secretary-General to seek the views of Governments, specialized agencies,

non-governmental organizations and United Nations bodies concerned with human rights on the desirability of convening a World Conference on Human Rights. Recent developments in international relations, the improvement in the international climate and a distinct move from confrontation to co-operation were no doubt encouraging factors for the covening of such a conference, which would give the international community an opportunity for taking stock of achievements, in the field of human rights over the past 25 years, examining the potential for further advances and reviewing the efficiency of existing human rights machinery.

10. At its previous session in March 1990, the Commission on Human Rights had once again thoroughly discussed issues relating to torture and other cruel, inhuman or degrading treatment or punishment. The Commission had had before it, in particular, the annual report of its Special Rapporteur, in which he had emphasized the importance of education in the field of human rights and recommended that the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, the Code of Conduct for Law Enforcement Officials and the Standard Minimum Rules for the Treatment of Prisoners should be translated into national languages and used as teaching material on training courses for law enforcement personnel and members of security forces responsible for protecting law and order.

11. In resolution 1990/34 of 2 March 1990, the Commission on Human Rights had supported those recommendations and, inter alia, requested the Special Rapporteur to continue to promote universal accession to the Convention against Torture and to encourage all States to comply strictly with its provisions. The Commission had also deemed it desirable that the Special Rapporteur should continue to hold periodic consultations with the Committee against Torture, in particular with a view to establishing the procedures for co-operation and avoiding any overlap in United Nations anti-torture activities.

12. Furthermore, the Commission had emphasized the importance of training programmes for law enforcement and security personnel, drawing the attention of interested Governments to the possibilities afforded in that connection by the United Nations programme of advisory services. In resolution 1990/37 of 6 March 1990, relating to the use of force by law enforcement officials, the Commission had requested the Secretary-General to help organize workshops and other meetings on issues relevant to the Code of Conduct for Law Enforcement Officials, including the provision of technical services in that area.

13. He wished to take the opportunity of conveying his congratulations to the five members of the Committee who had been re-elected at the Second Meeting of States parties to the Convention against Torture, held on 28 November 1989. At that Meeting, the States parties had reaffirmed their commitment to comply fully and promptly with their financial obligations under the Convention and urged States parties that had not yet paid their contributions, in particular those whose arrears pertained to two consecutive financial periods, to fulfil their obligations forthwith. The States parties had also approved the programme budget estimates proposed by the Secretary-General for 1990 and 1991. The summary record of that Meeting (CAT/SP/SR.2) was at the disposal of members of the Committee.

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14. The General Assembly and the Commission on Human Rights, in their most recent resolutions on the status of the Convention, had once again stressed the importance of strict compliance by States parties with their financial obligations so as to enable the Committee effectively to perform its functions under the Convention and to ensure its long-term viability as an essential mechanism for monitoring the effective implementation of the Convention's provisions.

SOLEMN DECLARATION BY THE NEWLY ELECTED MEMBERS OF THE COMMITTEE (item 2 of the provisional agenda)

15. The ACTING CHAIRMAN invited the newly elected members to make the required solemn declaration.

16. Mr. DIPANDA MOUELLE, Mr. KHITRIN, Mr. MIKHAILOV, Mr. SORENSEN and Mr. VOYAME solemnly undertook conscientiously to perform their duties as members of the Committee.

ELECTION OF THE OFFICERS OF THE COMMITTEE (item 3 of the provisional agenda)

17. The ACTING CHAIRMAN invited the Committee to elect its Chairman.

18. Mr. KHITRIN nominated Mr. Voyame for the office of Chairman.

19. Mr. SORENSEN, Mr. GIL LAVEDRA and Mr. DIPANDA MOUELLE supported the nomination.

20. Mr. Voyame was elected Chairman by acclamation.

21. Mr. Voyame took the Chair.

22. The CHAIRMAN said that he was pleased to return to his place among the members of the Committee in order to work in an atmosphere of mutual confidence, and thanked them for expressing their renewed confidence in him by entrusting him once again with the chairmanship.

23. After being nominated by Mr Sorensen, Mr. Dipanda Mouelle, Mr. Gil Lavedra and Mr. Mikhailov were elected Vice-Chairmen, and Mr. Burns was elected Rapporteur.

ADOPTION OF THE AGENDA (item 4 of the provisional agenda)

24. The CHAIRMAN said that the Committee had received information pursuant to article 20 of the Convention. He therefore proposed that the following question should be included as item 8 of the provisional agenda: "Consideration of information received under article 20 of the Convention". The last two items of the provisional agenda would be re-numbered accordingly.

25. The provisional agenda, as amended, was adopted.

ORGANIZATIONAL AND OTHER MATTERS (agenda item 5)

26. The CHAIRMAN introduced the Committee's draft programme of work.

27. The Committee's programme of work was adopted.

28. Mr. HOUSHMAND (Representative of the Secretary-General) said that the item entitled "Action by the General Assembly at its forty-fourth session" had been included in the agenda in accordance with the existing practice of other treaty bodies.

29. At the request of the Czechoslovak Government, consideration of the report of Czechoslovakia would be deferred until the next session; the report of the Netherlands would be considered in its stead.

30. He read out a letter addressed to Mr. Voyame by Mr. Bengzon stating that Mr. Bengzon would be unable to take part in the work of the Committee. At President Aquino's request, he had decided to devote priority attention to the important tasks which rendered his presence necessary in Manila as Vice-Chairman of the Presidential Committee on Military Bases and of the Philippine Government Panel which would be negotiating with their United States counterparts.

The meeting rose at 11.40 a.m.

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COMMITTEE AGAINST TORTURE

Fourth session

SUMMARY RECORD OF THE 44th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 24 April 1990, at 10 a.m.

Chairman: Mr. VOYAME

CONTENTS

Consideration of reports submitted by States parties under article 19 of the Convention

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GE.90-12033/1889B

The meeting was called to order at 10.05 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 7)

Consideration of the initial report by Senegal (CAT/C/5/Add.19)

1. The CHAIRMAN invited Messrs. Sene and Kama (Senegal) to take their places at the Committee table in order to introduce the initial report by Senegal.

2. Mr. SENE (Senegal) recalled that his delegation had played a principled and determined part in the preparation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which had been adopted by the General Assembly in 1984 and ratified by his country in 1986.

3. The human being was sacred under the constitutional law of Senegal and the protection of human life was a fundamental principle which derived from his country's traditional human values, from the Declaration of the Rights of Man and the Citizen of 1789 and from the Universal Declaration of Human Rights of 1948. Since achieving independence and under its successive constitutions, Senegal had always affirmed the principles guaranteeing human rights and freedoms. The phenomenon of torture was analysed in the report in the light of those principles and within the framework of the administration of criminal justice in Senegal. Although the Penal Code of Senegal, which was currently being revised, contained no specific provisions on torture, there were general provisions enabling acts of torture to be prevented and punished.

4. A group of Senegalese lawyers was currently engaged in preparing a draft African convention for the prevention of torture to supplement the machinery of protection under the African Charter on Human and Peoples' Rights. It was to be hoped that the draft convention would be supported in both Africa and other regions of the world by Governments, intergovernmental organizations, non-governmental organizations and, above all, by the humanitarian bodies needed for its implementation, and that the States members of OAU would accede to it en masse.

5. Mr. Kama, Advocate General of the Court of Appeal at Dakar would give a detailed introduction to the initial report of the Republic of Senegal.

6. Mr. KAMA (Senegal), introducing the initial report of Senegal (CAT/C/5/Add.19), said that Senegal had ratified the Convention against Torture on 26 August 1986, less than two years after its adoption by the General Assembly, and the provisions of the Convention had been incorporated into domestic law in accordance with article 79 of the Constitution of Senegal. Those provisions could accordingly be invoked before the courts and administrative authorities and were directly enforceable.

7. The initial report submitted by Senegal was in two parts. Part I dealt with general aspects of Senegalese legislation with regard to the administration of criminal justice and the ways in which the phenomenon of torture could be handled during the three successive phases of the criminal procedure, namely preliminary investigation, investigation by the examining magistrate and court proceedings. The second part consisted of replies to questions concerning the implementation of articles 2 to 16 of the Convention in the existing state of Senegalese legislation.

8. The attitude of the Senegalese legislature to the phenomenon of torture was governed in the first place by the preamble of the Constitution, which affirmed the attachment of the Senegalese people to the Universal Declaration of Human Rights of 1948, article 5 of which stated that "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment". By virtue of article 6 of the Constitution of Senegal, "Everyone shall have the right to life and to physical integrity under the conditions laid down by the law" and the State was bound to respect and protect the human person. The fundamental concept whereby the human person was sacred was at the root of the Penal Code and of the Code of Criminal Procedure of Senegal.

9. Although torture, as defined in article 1 of the Convention against Torture, was not specifically referred to in the Penal Code, the constituent elements of torture were none the less taken into account under the generic term "blows and deliberate injuries". The Penal Code contained moreover numerous provisions which imposed severe penalties in respect of assaults on the physical integrity of the human person. Reference should be made in that connection to the penalties imposed for illegal arrest and arbitrary detention, penalties which might extend to capital punishment where the arrest or detention had been accompanied by acts of torture on the part of agents of the State.

10. The principle of arrest and custody had been considerably modified by the Act of 27 February 1985, since the risk of torture and ill-treatment had been found to be greatest to persons in custody in police or gendarmerie stations. The 1985 Act had strengthened the protection of persons held in custody in police stations and placed correspondingly greater obligations on police officers. In the first place, the period of custody after arrest should not exceed 48 hours, although it could in some cases be extended with the written authorization of the State Prosecutor. Furthermore, the person in custody had to be informed of the grounds for his confinement and for any extension thereof, and also of his right to a medical examination at his own request or at the request of his lawyer or any other person.

11. Article 56 et seq. of the Code of Criminal Procedure dealing with those questions were duly implemented in practice, as was evident from a decision by the Complaints Chamber of the Court of Appeal of Dakar, which had quashed the findings of a preliminary investigation because of complaints of ill-treatment while in custody after arrest. An inquiry was still proceeding to verify the truth of the allegations. Senegalese law allowed a measure of freedom in regard to evidence in criminal proceedings, but the investigation of a case had to comply as closely as possible with the regulations. The judge, when considering a case file, was entitled to assess the items of evidence submitted to him as he saw fit but would reject any confessions obtained under duress.

12. There was also a risk of torture or ill-treatment in places of imprisonment. A Decree of 1966 relating to detention conditions prohibited custodial staff members from carrying out acts of violence on the persons of prisoners or addressing them in abusive terms or using coarse language. Prison warders who failed in their duties were subject to punishment. A medical/social service was available in all penal establishments, which was responsible for supervising the health of the detainees and the prison doctors were required to report any cases of ill-treatment which came to their attention.

13. Although it was accepted that, in certain exceptional circumstances such as a state of emergency or a state of siege when there was an imminent public threat to the existence of the nation, restrictions might be imposed on the exercise of certain public freedoms, the exceptional powers, with which the forces of law and order would then be invested, in no case authorized them to inflict on persons torture or other cruel, inhuman or degrading treatment or punishment.

14. In part II of the report, dealing with the implementation by Senegal of the provisions of the Convention against Torture, consideration was given inter alia to the question of the extraterritorial scope of Senegalese criminal law under article 669 of the Code of Criminal Procedure in respect of offences committed by Senegalese citizens or by foreigners outside the country. Since the principle of universal competence was enshrined in numerous conventions which laid down universally recognized values, such as the Conventions on drug-trafficking or counterfeiting or the Convention against Torture, to which Senegal was a party, Senegalese courts might in certain specific cases deal with offences committed by a foreigner outside Senegal, where the foreigner had been apprehended on Senegalese territory.

15. He had endeavoured to bring out the main lines of the initial report of Senegal and would be happy to answer any questions not covered in the report which members of the Committee might like to ask.

16. The CHAIRMAN thanked Mr. Kama for his very instructive introductory statement. He invited the members of the Committee to comment on or ask questions about the report submitted by Senegal.

17. Mr. BURNS welcomed the detailed information provided in the initial report of Senegal, in particular in part I relating to the general framework of Senegalese law. He would, however, be grateful for clarification of certain aspects, in particular the age from which a person became criminally responsible. In view of the fact, repeated on several occasions in the report, that capital punishment had not been carried out over the past 20 years, he wondered whether there was any point in retaining such an obsolete provision.

18. According to the report, foreigners accounted for 12 per cent of the prison population. He wondered whether there was some explanation for that phenomenon.

19. In connection with paragraph 138 of the report, he asked whether not only acts of violence, but also the threat of such acts was proscribed by the Penal Code, including threats made against a third person, which came under the definition of torture as set out in article 1 of the Convention.

20. He was concerned about the accuracy of the English version of paragraph 141, in particular the translation of article 315 of the Penal Code. There was every reason to suppose that the word "murder" was mistakenly used in place of the word "homicide", since it was unthinkable that the law of a State could, even under exceptional circumstances, authorize the Commission of murder, which was by definition illegal.

21. In connection with paragraph 161, he welcomed the praiseworthy efforts made by Senegal to provide judges and also members of the police and the prison service, with training courses on the obligation to respect human rights. The example of Senegal could serve as a model for other countries.

22. Referring to an Amnesty International report, alleging that torture had been perpetrated by members of the security services against persons suspected of belonging to the Casamance separatist movement, he pointed out that Amnesty International, after having verified the alleged facts, had sent a memorandum to the competent authorities which had, however, refused to open an official inquiry. Amnesty International was accordingly concerned that the obligation under international law to carry out an ex officio inquiry into allegations of torture, even in the absence of a formal complaint, had not been complied with. It was regrettable that, apart from the judicial procedure which was often very lengthy, there was no provision for any administrative procedure for investigating allegations of torture.

23. Mr. KHITRIN, having welcomed the steps taken by Senegal to ensure the rule of law, said he wished to know whether compliance with the obligations imposed by the Convention had entailed any particular difficulties to the country.

24. With regard to paragraph 38 of the report relating to the régime of custody after arrest, which stated that it was possible, under article 55 of the Code of Criminal Procedure, for a custody order to be issued against innocent persons, for example persons who might be able to give information of use to the investigation or where a verification of identity was needed, he would like to know whether such persons were held in prison establishments or in special centres.

25. Referring to paragraph 65 on political offences, he asked how many people had been charged with offences against the security of the State and for details of the cases which had given rise to criminal prosecution.

26. Paragraph 133 stated that political prisoners should be imprisoned in a special establishment and, wherever possible, in a special wing separated from other prisoners. He would like details of the number of political prisoners in Senegal and on the characteristics of the prison establishments in which they were held.

27. In connection with paragraph 141 of the report and the provisions of article 315 of the Penal Code cited therein, he shared Mr. Burns' concern with regard to the English version of that article, which could give the impression that murder was authorized by the law.

28. With regard to paragraph 149, subparagraph (c), of the report, he would like to have details of cases where persons had been held other than at places designated by the Government. He would also like statistics on the number of public officials who had been prosecuted for acts of torture or illegal detention and concrete examples of cases where a civil servant or other official had been punished under the Penal Code.

29. Mr. SORENSEN, welcoming the excellent report submitted by Senegal, said that it was indeed very full and included a number of very useful examples.

30. He was however concerned about the provision in article 16 of the Penal Code, referred to in paragraph 6 of the report, whereby a woman condemned to death, who declared herself to be pregnant, would be executed only after having given birth. In his view, that constituted cruel, inhuman and degrading treatment and asked whether, in the light of the Government's statement that no sentence of death had been carried out in nearly 20 years, the time had not come to abolish that provision once and for all, thus bringing the Senegalese Penal Code into line with the spirit and the letter of the Convention.

31. With regard to the régime of custody after arrest, covered in paragraphs 38 to 44 of the report, he paid tribute to the Senegalese delegation for its frankness in admitting that ill-treatment could take place in police stations, something which was unfortunately true everywhere in the world. He would like to know whether persons placed in custody after arrest were held in solitary confinement and, noting that they were entitled to request a medical examination, whether the examining doctor was appointed by the authorities or could be selected by the person concerned. The impartiality of the doctor was undoubtedly an essential condition in view of the fact that members of the medical profession had participated in torture in a considerable number of countries.

32. He shared Mr. Burns' concern about the Senegalese Government's attitude to the Amnesty International report of torture in Casamance. Contrary to what the Government asserted, namely, that the responsibility was on the prisoners themselves to submit complaints, article 12 of the Convention obliged the State party to undertake an impartial investigation "wherever there is reasonable ground to believe that an act of torture has been committed"; allegations emanating from a respected non-governmental organization certainly constituted "reasonable grounds".

33. It would be desirable for the Committee to have some information on the prison conditions in which persons were held in pre-trial detention, since the situation of that category of detainees in a number of countries often left much to be desired. It would also be useful to know the average duration of pre-trial detention and also the longest individual periods of detention say, for example, during the year 1988. In the light of paragraphs 128 and 129 of the report, which stated that persons provisionally in prison were not required to work, were allowed to wear their own clothing and were entitled to send and receive letters without any restriction, he asked whether convicted prisoners were treated in any way differently and, in particular, how often they were allowed visits.

34. The human rights training of recruits to the police and the prison service, referred to in connection with article 10 of the Convention (para. 161 of the report), was praiseworthy. He would like to know, however, whether similar training was envisaged for medical and nursing staff.

35. It appeared that the right of torture victims to redress and compensation, guaranteed under article 14 of the Convention, was not an automatic one, but that the victim had to bring a civil action for redress. Since the victims of torture were often precluded by their psychological state from initiating proceedings before the courts, there was good reason to make redress an automatic process. Moreover financial compensation was not usually sufficient; moral support and follow-up medical treatment were also needed.

36. Mr. DIPANDA MOUELLE, noting with satisfaction the quality of the report submitted by Senegal (CAT/C/5/19) and of its introduction by the Senegalese delegation, said that Senegal was a living and dynamic example of democracy to all the countries of Africa. He would, however, have preferred part I of the report (general information and legal background) to have been more concise.

37. He would like to have details on the practical implementation of the sentence of hard labour for life, for which provision was made in article 7 of the Penal Code of Senegal (para. 4 of the report); such a punishment might well constitute a form of torture. In regard to the statement in paragraph 6 that no death sentence had been carried out in Senegal in nearly 20 years, he wondered whether that was because no sentence of capital punishment had been imposed or because the most serious crimes had been downgraded. Incidentally, if the corresponding legislative provision had become obsolete, he could not see why it had not been repealed.

38. Paragraph 32 of the report stated that criminal investigation officers were responsible to the State Prosecutor, whereas paragraph 30 had them acting under the instructions of the Government Attorney at the Court of Appeal. There appeared to be some contradiction there, and he would like to know which version was the correct one.

39. According to paragraph 50 of the report, in the absence of the State Prosecutor, the functions of the Department of Public Prosecutions were performed by the president of the departmental court under the direct supervision of the State Prosecutor. Since the court and the Department of Public Prosecutions were independent of each other, he wondered how the State Prosecutor could exercise supervision over the president of the departmental court. Lastly, with respect to custody after arrest, he would like to know what the procedure was for informing the person in custody of the reasons for his detention: orally, by means of an inquiry procedure report or in some other written form.

40. Mrs. DIAZ PALACIOS paid tribute to Senegal for having provided the Committee with a very instructive report and commended the excellent introduction by the Senegalese delegation.

41. Addressing the question of the prison population (paras. 120 to 122 of the report), she asked for information on the number of prison establishments of all kinds in the country and whether or not they were overcrowded.

42. With regard to the steps taken by Senegal to implement article 4 of the Convention, she would like to know the number of civil servants and other officials who had been prosecuted for acts of torture. Details would also be welcome of complaints of maltreatment or torture and on the procedure for handling such complaints.

43. Mr. GIL LAVEDRA thanked the Senegalese delegation for introducing the report which was before the Committee.

44. Article 15 of the Senegalese Code of Criminal Procedure made officers of the gendarmerie responsible for the investigation of crimes and offences although it was, in fact, members of the gendarmerie against whom complaints of ill-treatment were most frequently lodged. He would like to know what form of supervision was exercised by the Government Attorney in the event of an

alleged offence by a police officer. It was not clear whether the right of arrest was reserved to criminal investigation officers or whether it could be exercised by members of the security or intelligence services.

45. He would also like to know whether, in practice, the provisions of articles 334 and 337 of the Senegalese Penal Code, providing for and punishing illegal arrests and abductions by private individuals, were applicable also if those acts were committed by public officials (paras. 150 and 151 of the report) and requested information concerning the legal basis whereby the courts were empowered to quash the results of preliminary inquiries where it could be proved that the alleged offenders had been subjected to ill-treatment during interrogation. Some clarification would also be welcome with regard to the cases of torture allegedly inflicted by the gendarmerie in the south of the country. Lastly, he would like to know the number of complaints submitted in respect of acts of torture and whether those offences related to particular areas of jurisdiction.

46. Mr. MIKHAILOV, having thanked the Senegalese delegation for its well-presented and excellent report, commented on the remarkable progress which had been made in legislative activity and the protection of human rights in Senegal.

47. He would, however, like to know whether conformity had been achieved at the local level between the legislation in force and judicial practice and requested information, in relation to paragraph 13 of the report, on the moment at which a person being charged was entitled to the assistance of a lawyer.

48. In crisis situations which had led the public authorities to adopt exceptional measures (para. 20 of the report), some details would be useful of the legal guarantees that were available for the protection of fundamental rights in such exceptional circumstances.

49. Amnesty International had provided some disturbing information regarding political prisoners in custody in Senegal, especially in the south of the country; he would welcome some explanation of the position.

50. The CHAIRMAN, speaking as a member of the Committee, also expressed great satisfaction at the very full and informative report submitted by Senegal. The exhaustive information on the police, judiciary and prison system, together with the oral introduction of the report, dealt very effectively with the implementation of the Convention in Senegal.

51. Referring to the situation regarding international commitments (para. 28 of the report), he noted that, in Senegal, international treaties were directly enforceable "subject ... to their being implemented by the other party". That was an entirely unexceptionable provision in the case of bilateral agreements and treaties, but its significance was hard to grasp in the case of a multilateral treaty such as the Convention against Torture.

52. It was his understanding that, even though it was evident from the report that there was no express provision in legislation for implementation of all the provisions of the Convention, those provisions would be implemented directly by the Senegalese authorities under article 79 of the Constitution,

so that there was a legal basis for implementation of the Convention, even in the absence of any specific legislative provision. He would welcome confirmation of that interpretation.

53. A member of the Committee had asked whether human rights training was given to medical staff. The same question was equally applicable to military personnel who could, on occasion, be guilty of acts of torture. It would also be useful to know whether the reforms at the National Judicial Training School had already begun.

54. Concrete examples of the prosecution of persons responsible for acts of torture would be very useful. Like the other members of the Committee, he awaited with some interest the comments of the representatives of Senegal on the subject of alleged acts of torture in Casamance; he noted that, although the majority of those allegations dated back to the period before the entry into force of the Convention in Senegal, some of them had occurred subsequently.

55. Mr. BURNS, clarifying one of the questions which he had asked previously, said that article 315 of the Penal Code (para. 141 of the report) provided that "There is no crime or offence when murder or bodily assault have been prescribed by law." Since he did not see how "bodily assault" could very well have been prescribed by the law, he would like to be reassured that the bodily assault in question could not under any circumstances denote corporal punishment. If corporal punishment was practised in Senegal, he would like to have information on the type of punishment and the manner in which it was administered, especially in the light of article 16 of the Convention.

56. Mr. GIL LAVEDRA said that, as he understood it, article 315 of the Senegalese Penal Code was actually referring to what was conventionally called the "duty of obedience". It was none the less strange that "murder or bodily assault" could be regarded as acts exempt from criminal liability or justified by the order of a superior. It was thus most important to understand the actual scope of that article and to know whether the legislator really intended that an order by a higher authority could be held to justify actions of that nature.

57. The CHAIRMAN invited the Senegalese delegation to reply orally at the next meeting to the questions that had been asked.

The meeting rose at 11.50 a.m.

UNITED NATIONS

CAT

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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COMMITTEE AGAINST TORTURE

Fourth session

SUMMARY RECORD OF THE 45th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 24 April 1990, at 3 p.m.

Chairman: Mr. VOYAME

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Initial report of Senegal (continued)

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GE.90-12045/6130A

The meeting was called to order at 3.10 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 7) (continued)

Initial report of Senegal (CAT/C/5/Add.19) (continued)

1. The CHAIRMAN invited the representatives of Senegal to reply to questions asked at the previous meeting.

2. Mr. KAMA (Senegal), replying to the questions asked by Mr. Burns, referred to paragraphs 79 and 80 of his country's report and said that special legislation applied to minors between the ages of 13 and 18; only in exceptional cases could a judge order a minor in that age group to be placed in detention. Children below the age of 13 could not be placed in detention in any circumstances. In any event, Senegalese law aimed to rehabilitate, and not to punish, minors.

3. Concerning the death penalty, no such sentence had been imposed in Senegal for 20 years, and capital punishment could therefore be said to have been abolished de facto. The President of Senegal, who had recently received a delegation from the Senegalese section of Amnesty International inquiring about the death penalty, had reaffirmed his intention to grant a pardon for all persons sentenced to death. With regard to the observation that foreigners accounted for 12 per cent of the prison population of Senegal, he pointed out that as foreigners constituted an estimated 15 to 20 per cent of the entire Senegalese population, the figure of 12 per cent of the prison population was not excessive.

4. As to the use of threats to obtain evidence, he referred to paragraph 167 of Senegal's report and said that all evidence must be collected according to proper procedures; no statement obtained by means of threats could be invoked as evidence. Concerning article 315 of the Penal Code, a provision found in the legislation of all African countries whose legal system was based on French law, he drew attention to paragraph 141 of Senegal's report; that article could be invoked not in order to justify an order, but only if the order was itself legal. An illegal order was no justification. Consequently, any officer who carried out an order to commit an act of torture, which by definition was illegal, would be criminally responsible and liable to disciplinary measures. Responsibility for investigating alleged cases of torture in Senegal lay with the judiciary.

5. In reply to Mr. Khitrin, he said that Senegal had been a democracy subject to the rule of law ever since it had become a sovereign country and could therefore meet its obligations under the Convention against Torture. Its Penal Code was being revised, and the new version would contain a specific reference to torture, as defined by the Convention. As to the danger that innocent persons might be held in custody, clearly such a risk existed in all countries. The point was to reduce that risk as much as possible and, as could be seen from paragraphs 38 et seq. of the report, Senegalese legislation reflected that concern in that it carefully defined cases in which a custody order could be issued. The authorities must ensure that the duration of detention remained as short as possible.

6. Concerning the number of persons being tried before the State Security Court for political offences, he did not have complete statistics, but the Senegalese authorities had always sought to ensure that persons being tried before that Court received a fair trial. In reply to the question about the number of political prisoners in Senegal, he said that there were none in the legal sense of the term. Special detention centres existed for persons accused of crimes of a political nature, and in other establishments there were special premises where accused persons enjoyed more favourable treatment than ordinary detainees with regard to the right to receive visits, books, mail, etc. To his knowledge, no persons were detained outside official premises. There were very few specific cases in which allegations of torture by the police had been found to be true, but when they had, the persons responsible had been punished to the full extent of the law.

7. Responding to the questions raised by Mr. Sorensen, he said the fact that a pregnant woman sentenced to death could not be executed until her child had been born was not a cruel punishment inasmuch as, in actual practice, Senegal no longer applied the death penalty. Persons detained in custody were not held incommunicado, but were kept in sections of police stations set aside for that purpose; they could receive visits and were given medical attention. The detainee had the right to appoint his own doctor; thus, medical examinations to verify allegations of torture were impartial. As to whether it was necessary to file suit to prosecute in cases of alleged torture, he referred to paragraph 163 of the Senegalese report and said that in most cases, police officers or gendarmes acted on their own initiative to prosecute; in the case of the State Prosecutor, suit must be filed. Article 127 bis of the Penal Code had been introduced in 1985, because until then there had been no time-limit on detention during investigation. That article provided that detention in custody could not exceed six months. If, for the purposes of investigation, the judge considered it necessary to extend the period of detention, he could do so for a further six months, but must substantiate that decision. Otherwise, the detainee must be released.

8. In reply to a further question by Mr. Sorensen, he said that detainees' rights to visits and correspondence were protected by law. Prisoners who had been sentenced could in some circumstances be compelled by prison authorities to wear prison uniform. Persons detained pending trial were not required to work, but could ask to do so. Prison law provided that there should be just remuneration for work done.

9. Mr. Sorensen had suggested that doctors should receive instruction in human rights, and had expressed concern that some doctors might in fact be responsible for human rights abuses. Given that doctors were often summoned in human rights abuse cases to record the fact and provide treatment, human rights instruction for doctors was obviously a good idea, which he would pass on for incorporation in the draft legislation being prepared on human rights instruction in the legal divisions of the Judicial Training College, the Customs Administration School, the Gendarmerie Training School and the Police Academy. There should also be human rights teaching for army personnel, as Mr. Sorensen, the Chairman and Mr. Mikhailov had suggested.

10. In Senegal, rehabilitation was a right in some circumstances - if the conditions of article 741 of the Penal Code were met - and in others, a

request must be made to the prosecuting court. Where it had been established that evidence material to a conviction had been obtained by torture, release would be immediate and rehabilitation would be as of right.

11. Mr. Dipanda Mouelle had expressed regret that the first part of Senegal's report (CAT/C/5/Add.19) was rather long. The report was, in fact, an initial report, and future reports would necessarily be shorter. He welcomed the fact that the report, by its length, had provided ample material for questions by the Committee.

12. In reply to a question by Mr. Dipanda Mouelle, he reminded members that Senegal had inherited the concept of hard labour from French law, where it had been replaced by incarceration. Hard labour was an out-of-date penalty, and Senegal planned to replace it by incarceration. In the interim, a sentence to hard labour was already served as incarceration; prisoners sentenced to hard labour served their sentences in the same establishments and under the same conditions as those sentenced to incarceration alone. There was no such thing as hard labour for life. Mr. Dipanda Mouelle had also asked whether it was worthwhile retaining the death peanlty, which he (Mr. Kama) also considered out-dated, in Senegalese legislation. He referred to his answer to the question asked by the Rapporteur of the Committee on that point.

13. Mr. Dipanda Mouelle had also asked how the President of the departmental court could perform the functions of a Deputy State Prosecutor, representing the Department of Public Prosecutions. The criticism that such a system violated the separation of powers of the Ministry of Justice and the Department of Public Prosecutions was justified; however, the arrangement was merely a transitional one, accounted for by the shortage of qualified magistrates in Senegal. That situation was in the process of being rectified.

14. Mr. Dipanda Mouelle had inquired if persons subject to a custody order were informed of the reasons for that order, and if so whether they were informed orally or in writing; he had also asked whether the fact that such information had been given appeared in the record. He (Mr. Kama) pointed out that the Committee had been provided with a transcript of a case in which allegations of torture had been examined. In that case, it had been shown from the record that the person in custody had not been informed of the reason for the order, a fact which had been viewed as material.

15. In reply to a question by Mrs. Diaz Palacios, he said that Senegal had many prison establishments at both the regional and departmental levels. The information in the report (CAT/C/5/Add.19) was based on statistics on the prison population provided by the Directorate of Prison Administration; he regretted that those statistics had not been included in an annex to the report, and he would forward them to the Committee.

16. In connection with Mrs. Diaz Palacios' question on prison overcrowding, he agreed that that situation indeed existed, as in other developing countries; the fact that there was overcrowding elsewhere was, of course, no justification, and he assured the Committee that the Senegalese authorities were aware of the problem. One method which had been adopted to reduce the problem was the granting of presidential pardons and amnesties on the National Day and at the New Year.

17. In reply to a further question by Mrs. Diaz Palacios concerning the number of complaints by individuals concerning abuses of authority or instances of torture by police, he said that most prosecutions for such acts were undertaken on the initiative of the Department of Public Prosecutions. Private individuals usually complained to the Department about such cases, although they could bring cases to the civil courts themselves.

18. Replying to questions by Mr. Gil Lavedra, and in connection with the report by Amnesty International, he said that in the cities, crimes were investigated by criminal investigation officers, who were mainly policemen; in rural areas, policing was carried out mainly by the gendarmerie, of whom only brigade commanders could initiate a preliminary investigation or issue a custody order. Ordinary gendarmes did not have that authority. The Government Attorney was responsible for monitoring custody orders. He sent out circulars instructing State Prosecutors to make visits, without notice, to gendarmerie brigade headquarters to check the conditions in which persons were being held in custody.

19. Illegal arrest and detention were severely punished under the Senegalese Penal Code. The death penalty was not invoked, unless death resulted from torture. Torture would be considered even more reprehensible if it was committed by a public official.

20. Although freedom of criminal evidence was the rule in Senegal, evidence must be obtained according to proper procedures: although the law might not specifically set out which means of obtaining evidence were prohibited, Senegalese courts applied certain general principles with the result that evidence obtained by means of torture would be held inadmissible.

21. Replying to questions by Mr. Gil Lavedra and Mr. Mikhailov, he said that the allegation contained in the Amnesty International report that torture had been used in Casamance concerned a number of separatists who had attacked the police; some separatists had died in the attack. Those who had been arrested had been properly brought to trial and had received fair trials. Some had been released, some had been convicted and, of those, some had been pardoned. Senegal, like any democracy, required that political demands should be made legally through political parties, of which Senegal had 17. He had been encouraged to hear that Zaire was joining the world-wide move towards multi-party democracy, a system which Senegal advocated.

22. In Senegal, torture cases were tried by ordinary judges in ordinary courts; he could see no objection to the establishment of special courts to try torture cases, although no legal body had so far pressed the point.

23. In reply to a question by Mr. Mikhailov, he said that Senegalese legislation was based on the African tradition which placed the emphasis on the human being. In Senegal, people considered torture to be an incomprehensible practice as it was so foreign to that tradition, denying as it did the worth of the human being.

24. In reply to the question about the stage at which access to a lawyer was granted, he observed that in flagrante delicto cases there was a requirement that the case be tried as soon as possible, that the accused be informed of his right to counsel and that he should have three days in which to prepare his defence. Otherwise, Senegal had inherited French law, under which there

was no access to a lawyer during the preliminary inquiry, access being granted once charges had been laid. The Senegalese bar took the view that human rights in general and the rights of persons in custody in particular would be better served if defendants had access to counsel immediately, a position which the Department of Public Prosecutions had not supported. The debate was by no means concluded. It was quite possible that in future access to legal counsel might be granted from the outset of the prosecution process or from the moment the custody order was issued.

25. In connection with Mr. Mikhailov's question concerning the restriction or suspension of certain rights in exceptional circumstances, he referred to paragraph 139 of the Senegalese report (CAT/C/5/Add.19), and added that the President was obliged to broadcast a message to the nation before promulgating a state of emergency. The safeguards surrounding any suspension or restriction of constitutional rights were strict and adequate.

26. In reply to a question by the Chairman, he said that the provision under article 69 of the Senegalese Constitution for incorporating the provisions of international instruments into Senegalese domestic law upon ratification of those instruments by the Senegalese Parliament had been included in the Constitution with bilateral agreements in mind. In the case of universal instruments, such as the Convention against Torture, the question arose of any reservations a State might make on acceding to such an agreement; however, Senegal had ratified the Convention against Torture with no reservations and should therefore have no difficulty in incorporating the relevant provisions into its domestic law.

27. The CHAIRMAN thanked Mr. Kama for his cogent replies to the questions asked by members of the Committee and inquired whether members had any further questions.

28. In reply to Mr. BURNS, who asked whether there was any form of authorized sanction in Senegal entailing physical punishment other than incarceration, Mr. KAMA (Senegal) said that as far as he knew there was none.

29. Mr. GIL LAVEDRA said that he had been impressed by the thoroughness of the Senegalese representative's replies. However, some of his replies showed that questions might not have been fully understood. The representative of Senegal had said that obviously public officials who committed torture would be punished in the same way as other persons. He wondered therefore whether there was not a mistake in the text of paragaraph 150 of the Spanish report, which, in English, read: "articles 334 to 337 of the Penal Code provide for and punish illegal arrest and abductions committed by individuals." In his opinion, the relevant articles applied both to individuals and to public officials.

30. He had not asked whether there was a special court for punishing torture but whether cases of torture had been brought before the State Security Court. The Senegalese representative had stated that there was no provision in Senegalese law concerning the validity of evidence obtained through torture. He pointed out that article 15 of the Convention, which now formed part of Senegalese law, was relevant in that regard.

31. Mr. KAMA (Senegal) agreed that, by virtue of the principle of the equality of citizens before the law, the same provisions applied to public officials, including the police and gendarmerie, as to private individuals.

32. As far as he was aware, no cases of torture had been brought before the State Security Court. Such cases had been tried under ordinary law.

33. Article 15 of the Convention would indeed be introduced into Senegalese law, but in any event evidence obtained through torture would not be taken into account in the Senegalese courts.

34. Mr. KHITRIN thanked the Senegalese representative for his replies. He requested further information in writing about special establishments for political detainees, the number of officials sentenced for the use of torture and the number of people sentenced to death.

35. Mr. DIPANDA MOUELLE asked what were the relations between the Government Attorney and the judges who, because of a shortage of personnel, were at present representing the Department of Public Prosecutions and were answerable to the State Prosecutor.

36. Mr. KAMA (Senegal) replied that the State Prosecutor sent a monthly report to the Government Attorney to inform him of the progress of criminal cases in the departmental and other courts.

37. The CHAIRMAN congratulated the Senegalese delegation on its excellent initial report, oral introduction and replies to the questions asked by members of the Committee.

38. On the question of the execution of pregnant women raised by Mr. Sorensen, he said that since execution was not considered by the Convention as constituting torture or inhuman treatment, the question at issue was whether the time or circumstances of the execution were inhuman. Mr. Kama had said that for 20 years the death penalty had not been imposed in Senegal. However, if the sentence were to be imposed on a pregnant women, he imagined that it would be carried out as humanely as possible and not be imposed immediately after the woman gave birth. None the less, if such a case ever arose, the Committee might have to reconsider the matter.

39. He hoped that further information would be given in the next report on the way in which the plans for training and information were being carried out. Members of the Committee had noted the political context of the Casamance case but, in putting their questions, had had in mind article 2, paragaraph 2, of the Convention. If cases of torture had taken place as alleged, they could not be justified under that article.

40. Taking up a point made by Mr. Gil Lavedra, he wondered if it was indeed possible that articles 334-337 of the Penal Code, which provided for and punished illegal arrests and abductions committed by individuals, would, as stated in paragraph 151, apply to illegal arrests and abductions perpetrated by public officials. He would be surprised if that was indeed the case but believed that the question was merely one of drafting.

41. He requested the Senegalese delegation to reply in writing to the questions put by members on the number of cases of public officials sentenced for torture and to the request for statistics on prison establishments.

42. Mr. SENE (Senegal) said that his delegation was greatly honoured by the Committee's expressions of appreciation for its report and would certainly provide the additional information requested by members.

43. Concerning the possibility of a pregnant woman being sentenced to death, he pointed out that no woman - pregnant or otherwise - had ever been executed in Senegal and it was hoped that no such case would ever arise. The death penalty acted as a deterrent, and the Head of State had solemnly declared that it would not be imposed during the rest of his term of office.

44. As to the allegations of torture at Casamance, he said that the ICRC delegation in Dakar had been given constant access to the persons arrested and sentenced. That demonstrated the Government's trust in humanitarian organizations. He hoped that that practice would be followed in all African countries. As he had already informed the Committee, Senegalese lawyers were hoping to draw up a draft convention on the prevention of torture in Africa to supplement the African Charter on Human and People's Rights.

45. His delegation had tried to show, in what had been a fruitful dialogue with the members of the Committee, that Senegal was a democratic, pluralistic State where the rule of law prevailed. It had a free press, which was highly critical of public figures. It was a tolerant country, whose citizens abhorred violence, arbitrary acts, injustice and torture.

46. The exercise of drafting the report had enabled his country to review many of its procedures and the provisions of its Penal Code in the light of the provisions of the Convention, to which it intended to adapt its legislation on torture. In any event, Senegalese legislators had already considered a large number of measures to punish the offences covered by the Convention. Senegal would do everything possible to execute the provisions of the Convention, which it had ratified without reservation, and would continue to follow with interest the Committee's efforts to eradicate the odious crime of torture.

47. The CHAIRMAN said that the Committee had thus concluded its consideration of the initial report of Senegal.

48. Mr. Kama and Mr. Sene (Senegal) withdrew.

ORGANIZATIONAL AND OTHER MATTERS (agenda item 5) (continued)

49. The CHAIRMAN announced that the Committee would not meet on Tuesday afternoon and Wednesday of the following week in order to allow time for its report to be drafted.

50. A quorum was essential in order to enable the Committee to adopt its report for submission to the General Assembly and States parties. He therefore strongly urged members to be present at meetings until the evening of Friday, 4 May.

The meeting rose at 5.05 p.m.

UNITED
NATIONS

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Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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COMMITTEE AGAINST TORTURE

Fourth session

SUMMARY RECORD OF THE 46TH MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 25 April 1990, at 10 a.m.

Chairman: Mr. VOYAME

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Initial report of Tunisia

Initial report of the Netherlands

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GE.90-12055/1877B

The meeting was called to order at 10.05 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 7) (continued)

Initial report of Tunisia (CAT/C/7/Add.3)

1. The CHAIRMAN invited the Tunisian delegation, comprising Mr. Abed, Secretary of State and First President of the Administrative Tribunal, Mr. Fellous, Mr. Ben Malek and Mrs. Lyagoubi-Ouahchi, to take seats at the Committee table in order to introduce the initial report of Tunisia.

2. Mrs. LYAGOUBI-OUAHCHI (Tunisia) said that, since the historic change of 7 November 1987 the promotion and defence of human rights had been a constant concern of her country, which attached great importance to the consideration of the initial report it was submitting to the Committee.

3. Mr. ABED (Tunisia) said that his country's initial report had been drafted in the manner recommended by the Committee and, without being exhaustive, aimed to give an idea of the Tuinisian legal system since the country's independence and the adoption of the Tunisian Constitution of 1959, and of the enormous efforts to promote human rights and fundamental freedoms that had been made since President Zine El Abidine Ben Ali had become Head of the Executive Supreme Court on 7 November 1987. In less than two and a half years, a series of reforms and a number of measures had been adopted, ensuring political stability and consolidating democracy.

4. It would be recalled that Tunisia had ratified the International Covenant on Civil and Political Rights in 1968 and had submitted its most recent report on implementation of the Covenant to the Human Rights Committee in March 1987. It had also signed the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on 25 January 1988 and had ratified it on 23 September 1988, making no reservations in respect of articles 20 and 21. Tunisia therefore intended scrupulously to implement the provisions of the Convention, which were in perfect accord with the principles set out in the Proclamation of 7 November 1987.

5. Fundamental freedoms and human rights were set out in the Tunisian Constitution, particularly in articles 5-17, and were thus especially safeguarded since the provisions of the Constitution were at the summit of the hierarchy of legal provisions and only the legislature could, under certain conditions, amend them. Moreover, the Constitution proclaimed, in article 32, that duly ratified treaties had primacy over national law. After ratification, the Convention against Torture had thus become an integral part of Tunisian law and its provisions overrode any national law which might be at variance with it.

6. In Tunisia, public opinion was particularly sensitive to human rights issues. The Tunisian Human Rights League played an important role in defending democratic freedoms and collaborated with the public authorities to that end. It had thus been authorized to visit detainees, and the Government notified it of draft legislation which closely affected the rights of the individual, in order to obtain its views. The League's activities were an illustration of the provisions of the National Agreement, which had been

signed by representatives of the political parties and social and vocational organizations who had met on the first anniversary of the change of 7 November 1987. The National Agreement was aimed at safeguarding the security of the individual and guaranteeing his freedom and dignity.

7. Tunisian positive law had numerous provisions for the prevention and punishment of torture in all its forms. The authorities, however, did not desire only to punish, but also intended to prevent acts of torture and ill-treatment. Thus, judges and senior officials provided, in police and National Guard academies, training which stressed respect for the individual. There were also regular lectures and symposia for internal security force cadets, serving administrative staff and police officers in order to promote human values and to eliminate recourse to violence in any form. That effort in the area of education had been reinforced by posting the Universal Declaration of Human Rights in public places, and it was also planned, in the near future, to post extracts from the Convention against Torture.

8. At the prompting of President Ben Ali, many measures had also been taken to guarantee the exercise of human rights. Regulations had thus been issued concerning custody and pre-trial detention. Custody, which was limited to four days, could be renewed on one occasion under the supervision of the Public Prosecutor. During that period, the person held could undergo a medical examination by a doctor of his choice. The Security Court (an emergency court) had also been disbanded, forced labour had been abolished, persons convicted of offences committed for political or trade union motives before 7 November 1987 had been amnestied, and Amnesty International had been authorized to open a section in Tunis. There were now no political prisoners in Tunisian prisons and, since 7 November 1987, all persons under sentence of death had been reprieved by the President of the Republic. In June 1988, a Prisoners' Code had been adopted conforming to the principles embodied in the Constitution and the Convention against Torture.

9. Various other measures had been adopted and instructions issued to ensure that the new legislation, including the Convention against Torture, was implemented scrupulously; the members of the Committee would find the relevant texts in the dossier which had been transmitted to the secretariat for their benefit.

10. Nevertheless, much undoubtedly remained to be done before everybody could fully exercise the rights accorded him in the best possible practical conditions, but the progress already made gave good reason for satisfaction and hope. The Tunisian Government and legislature were convinced of the primary role of the law in strengthening the rights of the individual and personal freedoms. The work which had been carried out in Tunisia was of such breadth that the Head of State had received high honours, such as the international Louise Michel (Democracy and Human Rights) Prize, awarded by the Centre d'études politiques et de société in Paris in January 1989, and the Medal of Honour of the International Institute of Humanitarian Law, awarded in December 1989.

11. In order to promote further the full implementation of the Convention against Torture, his delegation was determined to derive the greatest possible benefit from the impending dialogue with the members of the Committee.

12. The CHAIRMAN thanked Mr. Abed for his very instructive and convincing presentation, and invited the members of the Committee to comment or ask questions on the report under consideration and the oral introduction which had just been delivered.

13. Mr. KHITRIN said that he had been very interested to read the Tunisian report, which was clear and precise; the report, together with the excellent oral presentation by the representative of Tunisia were indicative of the radical changes in the human rights field which had occurred in that country.

14. The ratification of a convention must, however, be followed up with practical steps to make people aware of it and to implement it. He therefore wished to know if the population had been made aware of the Convention against Torture in any way other than through its publication in an official journal, and if the police and prison staff training programme included teaching about torture and ill-treatment.

15. He asked if persons detained in custody were treated in a manner consistent with the Standard Minimum Rules for the Treatment of Prisoners. He would welcome figures and precise information concerning the length and nature of the sentences imposed and would like to know how those sentences were applied in practice and if application was monitored in any way.

16. Mr. DIPANDA MOUELLE said that most of his questions had been answered in the oral presentation by the representative of Tunisia. He would nevertheless welcome clarification of the following points.

17. Concerning the autonomy of the judiciary (para. 27 of the report), he would like to know how judges were trained and how they were appointed. Given the fact that they were independent, how were they penalized in the event of misconduct?

18. With regard to paragraph 41, which stated that the statute of judges for the Administrative Tribunal was similar to the statute of judges for the judicial system as far as independence was concerned, he asked if there were differences in other respects between the statutes of the two categories of judge.

19. In connection with paragraph 48, he asked how Tunisian courts could declare sentences handed down abroad to be enforceable. Did they use the exequatur procedure or some other mechanism?

20. Concerning paragraphs 50 and 57, he asked what was the position of the Public Prosecutor in a trial when the injured party himself initiated prosecution proceedings on his own responsibility.

21. On paragraph 69, he asked what the conditions of detention had been before November 1987 and what measures had been taken to bring about a marked and rapid improvement in those conditions.

22. Regarding the training of law enforcement personnel, he had heard with satisfaction that training was given to policemen and prison staff, but he would like to know if there were plans to give equivalent training to doctors and army personnel.

23. Concerning detention in custody, he asked if the Prosecutor could officially request a medical examination of a person in custody who had not himself requested such an examination.

24. Mr. MIKHAILOV congratulated the Tunisian delegation on the clarity of its oral presentation of the report under consideration. All the information provided showed that the changes in Tunisia in 1987 had led to a strengthening of human rights in that country and reforms in keeping with the provisions of the Convention against Torture.

25. He would nevertheless welcome clarification on certain points. He would particularly like to know the nature and legal significance of the "National Agreement" mentioned in paragraph 7 of the report. And what was the legal competence of the Tunisian Human Rights League, referred to in paragraph 8?

26. According to paragraph 22, ratified treaties occupied an intermediate position between the Constitution and internal laws. He would therefore like to know from the legal standpoint, what criteria had been used in establishing that classification. He requested clarification of the legal value of the publication, in the Journal Officiel, of the international conventions ratified by Tunisia (para. 26), and more detailed information on the two-jurisdiction principle which Tunisia had adopted (para. 37) and on how it was applied.

27. Concerning the possibility for an injured party himself to initiate prosecution proceedings on his own responsibility when the Public Prosecutor had decided to close the case (paras. 50 and 57), he asked what was the legal nature of such proceedings and whether liability was civil or criminal.

28. What were the "other difficulties" affecting the interpretation of the new provisions of the Penal Code and the Code of Criminal Procedure and laws predating the reforms begun in 1987, and what were the "certain contradictions" between them, which had been mentioned in paragraph 73 of the report?

29. Concerning conditions of detention in prisons, he would like to hear of specific ways in which conditions had been improved (paras. 69 and 76), and particularly to know in what respect the new provisions of Decree No. 88-1876 of 14 November 1988 represented an improvement on what had gone before. Further information about semi-open prisons (para. 77), in which conditions varied from one country to another, would also be useful. What were the characteristics of those prisons and for whom were they intended?

30. In connection with the rights of prisoners (para. 84), he would like to know if prisoners could speak to their lawyer without prison warders being present, as indicated in the original text of the report, or with prison warders present, as indicated in the Russian text. The difference was a major one. Also, what were sentences open to appeal and how were they carried out?

31. He asked if the human rights teaching in secondary schools, scheduled to begin in the 1989-1990 school year (para. 137), would also be given in universities, particularly law faculties.

32. And lastly, could the Tunisian delegation provide explanations about the mechanisms and methods of monitoring and investigation used by the bodies mentioned in paragraph 143 of the report.

33. Mr. SORENSEN congratulated the Tunisian delegation and people on the changes in that country, which had been duly reflected in the Tunisian report. He particularly welcomed all the penal reforms, which were described in detail in paragraphs 66-86 of the report. He nevertheless wished to know how those very important measures had been implemented in view of the short time that had elapsed since the change of 7 November 1987, and if the Government had encountered any obstacles or opposition. He asked if figures could be provided for the number of prisoners and prisons in Tunisia. Was there a problem of prison overcrowding, as in many other countries?

34. With regard to the right of persons detained in custody to request a medical examination, he wished to know whether the person concerned was free to select the doctor who would examine him or whether he could see only a prison or military doctor. The issue was an important one, given that doctors often participated in acts of torture or were present when such acts were committed.

35. Concerning the implementation of article 10 of the Convention, he had noted with interest that in hospitals forensic services were provided by specialized medical personnel who carried out medical examinations of the corpses of victims of violence or torture (para. 135), but he wondered whether the existence of such services did not in itself indicate that torture was still practised. He would therefore like to know how many cases of torture had been reported or discovered since the reforms of 1987 and if, pursuant to article 10 of the Convention, any training concerning the prohibition of torture was given to medical personnel in the curricula of medical faculties and nursing schools.

36. He noted that paragraphs 150-154 of the report, concerning the implementation of article 14 of the Convention, mentioned only compensation for torture victims and, not their psychological and physical rehabilitation. He would like to know, first, whether there was any possibility of rehabilitation, and secondly, whether torture victims could obtain redress only if they requested it or whether damages were awarded automatically when the policeman or official involved had been found guilty.

37. Ms. CHANET said that the initial report of Tunisia contained very precise information and had been presented in a very clear manner. It was very useful for the Committee to know what the laws of the country were, but even more useful for it to know how they were enforced, and it was that aspect that her questions would address.

38. Paragraph 114 of the report stated that the use of violence by public officials was a serious offence, especially when it resulted in wounds, disfigurement or permanent disability. As a definition of torture, that was more restrictive than that contained in article 1 of the Convention, as torture might leave no visible signs and cause only mental trauma. She would therefore like to know how Tunisian law solved that problem.

39. It would also be interesting to know how many complaints about violence or ill-treatment in police custody and during pre-trial detention had been heard by the courts, as mentioned in paragraph 68, and how many officials charged with acts of violence had been convicted.

40. Her understanding had been that a person in custody was given a medical examination only if he requested it; could he, though, be examined by a doctor of his own choice and, if he could not afford a doctor's fees, was one appointed ex officio and, if so, who paid his expenses?

41. The report contained very detailed information about the new provisions concerning conditions of imprisonment and prison regulations. She would nevertheless like to know what the conditions were for disciplinary isolation (para. 83), whether there was any appeal against isolation and whether isolation was monitored.

42. Concerning the question of the jurisdiction of Tunisian courts in the cases referred to in paragraph 102 of the report, she considered that, even if the Convention could be applied directly, adaptation laws would be necessary, unless Tunisia had criminal procedure laws and special rules of jurisdiction for offences committed abroad which would be applied within the framework of a universal jurisdiction. She requested further information on that question.

43. As the death penalty still existed in Tunisia, she wished to know in what cases it could be applied, whether it was actually imposed as a sentence, how it was carried out and in what conditions, and whether there were at that time any prisoners sentenced to death who were still awaiting execution.

44. Ms. DIAZ PALACIOS shared Mr. Sorensen's enthusiasm for the changes which had taken place in Tunisia, particularly the reforms of the prison system. She particularly welcomed the fact that women prisoners received special treatment and that they could keep their children with them up to the age of three and even longer on request (para. 82). However, might it not be possible to set up for those children some kind of institution close to the prison in order to provide them with a more suitable environment? It would be useful to hear the Tunisian delegation's opinion on that point.

45. Concerning the implementation of article 4 of the Convention, there did not seem to be any special penalty for public officials or similar persons (para. 94) in view of the aggravating circumstance constituted by the fact that they were public employees. She therefore wished to know the Tunisian delegation's view on the matter and when the new provisions mentioned had been introduced into the Penal Code.

46. Mr. GIL LAVEDRA welcomed the excellent report submitted by Tunisia, which reflected the country's resolute desire to modify its criminal law in such a way that human rights were more fully respected and the authorities and citizens adapted their behaviour to the major legal principles in that area. He also welcomed the fact that Tunisia had ratified the Convention against Torture, made the declarations under articles 21 and 22 recognizing the competence of the Committee, and reaffirmed its desire to put the provisions of the Convention into full effect.

47. With reference to paragraph 80 of the report, however, he would like to know whether people found guilty of minor offences could be sentenced to corrective labour, and whether corrective labour could replace custodial sentences.

48. In connection with paragraph 98, he welcomed the fact that during police custody, which was when torture or offences against the person most frequently occurred, persons in custody had the right to request a medical examination; he would, however, like to know who they should ask and what form their request should take. If the doctor certified that the person concerned had been subjected to violence, did that mean that any statements he had made could be deemed void?

49. Paragraph 139 said that under Act No. 87-70 of 26 November 1987 amending the Code of Criminal Procedure, a suspect could not be held in custody for more than four days unless the Public Prosecutor decided to extend custody. He asked how the person was treated during those four days, and specifically whether he could be held incommunicado and within what time-limit he was required to appear before a court and be informed of the charges against him.

50. Lastly, he would like to know the ratio between pre-trial detainees and sentenced prisoners in Tunisian prisons.

51. Mr. BURNS considered that Tunisia's efforts to promote human rights and ensure their observance had placed it among the leading countries in that area. It had signed most of the international human rights instruments, ratified the Convention against Torture, made the declarations under articles 21 and 22 without reservations in respect of article 20, and was currently taking steps to provide training in the observance of the fundamental human rights and freedoms set forth in article 5 of the Tunisian Constitution.

52. In connection with paragraph 72 of the report, he associated himself with Mr. Mikhailov's question concerning the implementation difficulties apparently caused by the new provisions.

53. With regard to corrective labour (para. 80), he wondered, like Mr. Gil Lavedra, what the distinction was between corrective labour and forced labour, given that the representative of Tunisia had said, in his oral presentation, that forced labour had been abolished.

54. Concerning paragraphs 144 and 145, he requested statistics on the number of prosecutions of officials who had engaged in unlawful practices or committed abuses; he hoped those statistics would be forthcoming in the near future, if not at the Committee's next meeting.

55. Further to paragraph 153, where it was stated that if a torture victim was destitute he might be granted legal aid, he would like to know which authority provided such assistance and under what conditions. Was legal assistance mere wishful thinking or was it actually granted in practice?

56. Turning to paragraph 164, he asked whether any prosecutions had ever been instituted against officials who had offended against the personal freedom of, or assaulted, other persons and, if so, what the results of those prosecutions had been.

57. Referring to Ms. Chanet's question about the death penalty, he requested further information on the number of cases in which the death sentence had been handed down, even though it had never been carried out since 1987. He also inquired whether anybody had been sentenced to corporal punishment.

58. He asked whether detainees could be held incommunicado in certain circumstances and, if so, on what grounds and for how long.

59. In the English text of paragraph 3 of the report, which related to the Declaration of 7 November 1987, the term "iniquity", which was close to "wickedness" in meaning, had been used in error instead of "inequity", meaning "injustice".

60. The CHAIRMAN, speaking as a member of the Committee, welcomed Tunisia's very detailed report, the first part of which in particular gave valuable information on the judicial and police systems and on the Tunisian prison régime. According to paragraph 22 of the report, international treaties were directly applicable in Tunisia, where they had primacy over domestic laws.

61. In connection with paragraph 73, which stated that there were contradictions between the new provisions and their predecessor laws, he was curious about the significance of such contradictions in the light of the implementation of the Convention which, by virtue of its superior legal authority, automatically overrode the laws. Would there be incompatibility with the provisions of the Constitution - which did not seem conceivable - or would it be the case that, in order to have operative force, the provisions of the Convention would have to be supplemented with enabling legislation?

62. With regard to paragraphs 100-102 of the report concerning article 5 of the Convention, which obliged each State party to establish its jurisdiction over offences against its criminal law, he observed that although the implementation of article 5, paragraph 1, apparently caused no difficulty in Tunisia, the report did not state clearly whether the provisions of paragraph 2 also applied directly.

63. Referring to paragraphs 142-146 of the report, he inquired whether police or National Guard personnel had recently been the subject of any inquiries, prosecutions or convictions. If any had been tried, he would like to see the texts of the verdicts.

64. With respect to paragraph 147 concerning article 13 of the Convention, under which any individual who alleged he had been subjected to torture had the right to complain to the competent authorities, he would like to know whether, in practice, any complaints had been lodged and, if so, in what circumstances. He would also like to know what action had been taken on those complaints.

65. Turning to paragraphs 150-154 concerning article 14 of the Convention, which required States parties to guarantee the right of an injured party to fair compensation, he observed that although the report mentioned the State's responsibility in respect of the internal security forces, it did not say whether the State was required to grant compensation when abuses had been committed by police officers, gendarmes, prison warders or medical staff.

66. According to paragraph 157, if a judge was convinced that an accused person's confession had been obtained through violence or torture, he would

avoid using such a confession as evidence. He wondered whether it might not be preferable in such a case to apply directly the provisions of article 15 of the Convention, which gave the judge no say in the matter.

67. He would also like to know whether the implementation of the Convention in Tunisia had caused any difficulties, and in particular whether police forces which were still inadequately trained or informed had hindered the efforts of the authorities to prevent and punish acts of torture. In that connection, he inquired whether any "hard cases" had been prosecuted and convicted and, if so, he would like to see the texts of the relevant decisions.

68. Mrs. LYAGOUBI-OUAHCHI (Tunisia) said that her delegation would endeavour to answer all the questions asked by the members of the Committee at the next meeting and to provide them as soon as possible with any statistics which had not by then been communicated to them.

69. The meeting was suspended at 11.40 a.m. and resumed at 11.50 a.m.

Initial report of the Netherlands (CAT/C/9/Add.1)

70. At the invitation of the Chairman, Mrs. Bechger, Mrs. Teekamp, Mr. Vey Mestdagh, Mr. Moralis, Mr. Schutte, Mr. van Dongen, and Mr. Kooijmans (Netherlands) took seats at the Committee table.

71. Mr. VEY MESTDAGH (Netherlands) said that he wished first of all to apologize on behalf of his Government for the late submission of the report and for the absence from it of a section on the Netherland Antilles, the authorities of that territory having sent the text too late for inclusion. His delegation would await directions by the Committee on the manner in which it wished to deal with that section of the report.

72. After referring to the role played by his country in the drafting of the Declaration and, later, the Convention against Torture, he recalled that the Netherlands had for several years contributed regularly to the United Nations Voluntary Fund for the Victims of Torture and that since 1 February 1989 it had been a party to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

73. As the reports by Mr. Kooijmans, the Special Rapporteur on Torture appointed by the Commission on Human Rights, made abundantly clear, torture was still widespread in most parts of the world. In that connection, he wished to stress the fruitful nature of the regular consultations held between the Committee and the Special Rapporteur.

74. In the section of the report under consideration dealing with the European part of the Kingdom of the Netherlands, the accent was placed on steps taken to bring Dutch legislation into line with the Convention. The main difficulty encountered by the legislature in giving effect to the Convention had been that of formulating a suitable definition of the offence of torture, the point at issue being whether that offence could be identified with the offence of grievous assault under the terms of the Netherlands Criminal Code. In the event, it had been deemed preferable, for the purposes of the implementation of the Convention, to promulgate a separate Act dealing with the offence of torture.

75. Another problem had arisen from the obligation to establish a universal jurisdiction. The Netherlands had traditionally adopted a very cautious position on that issue, taking the view that the interests of the international legal order were better served by a commitment to close international co-operation than by the imposition of competing unilateral national claims to jurisdiction. It did, however, seem intolerable that torturers protected by the régime in power in their country should be able to travel freely and, while abroad, come face to face with their former victims.

76. Mr. MORALIS (Netherlands), introducing the section of the report concerning Aruba, said that since 1 January 1986, the Kingdom of the Netherlands had consisted of the Netherlands itself, the Netherlands Antilles and Aruba, the three countries being equal partners with distinct identities and enjoying complete autonomy in their internal affairs. The Charter of the Kingdom, which was the Kingdom's highest constitutional instrument, was based upon its voluntary acceptance by the three countries.

77. Aruba thus applied its Constitution and laws in accordance with the Charter of the Kingdom. That was the framework within which human rights and fundamental freedoms were protected. The revision of the Aruban Penal Code, which was to be introduced in the second part of 1990, and the adoption of new legal procedures enabling individuals to appeal against government decisions also helped to enhance the protection of human rights.

78. The reason why torture and inhuman treatment were not specifically mentioned in Aruban laws was that protection of the individual formed the subject of many articles of both civil and criminal law. Amnesty International had never reported any cases of torture on the island. In the training of policemen and prison personnel, special attention was paid to human rights questions and observance of the national and international instruments pertaining thereto.

79. Mr. SØRENSEN thanked the Netherlands delegation for its detailed report.

80. The comments on the Convention's definition of the offence of torture contained in paragraph 29 of the report were of great interest and should no doubt be taken into consideration in the future. On the other hand, the few lines in paragraph 58 of the report devoted to the implementation of article 10 of the Convention were patently inadequate coming from a country which undoubtedly attached great importance to the training of its officials. It was to be regretted, for example, that no mention was made of medical or military personnel. He would therefore be grateful if the Netherlands delegation would supply detailed information on the training given to personnel in charge of suspects and detainees.

81. Paragraphs 70-73 referred only to "compensation", while article 14 of the Convention also spoke of "rehabilitation". The Netherlands had certainly done a great deal since 1979 in the field of rehabilitation, especially in terms of medical care, and additional information on that subject would be of interest.

82. Mr. BURNS congratulated the Netherlands delegation on the quality of its report and emphasized that few countries were as advanced in the protection of individuals as the Netherlands, which had made the declarations provided for under articles 21 and 22 and had not entered a reservation in respect of article 20 of the Convention.

83. He would, however, be interested to know whether there were circumstances in which an individual could be held incommunicado, and whether capital punishment had been abolished in Aruba as it had in the Netherlands.

84. Furthermore, the statement that there had been no prosecutions in the Netherlands for acts of torture committed since the Second World War was, in his opinion, far too vague. The absence of prosecutions could be due to all kinds of reasons, in particular to the police refusing to pay attention to allegations of torture or to an excessively narrow interpretation of the offence of torture. Neither of those reasons existed, of course, in the Netherlands but it would be interesting to know whether there had been any allegations of police brutality and, if so, what action had been taken.

85. He found the Netherlands system of compensation extremely interesting and would like to know whether there had been cases in which applications had been addressed to the Criminal Injuries Compensation Fund and whether any victims had been indemnified in consequence.

86. Lastly, he wondered what interpretation should be given to the last sentence of paragraph 68 to the effect that certain other forms of protection offered in other countries "would be unacceptable in the Netherlands". The use of the adjective "unacceptable" rather than "illegal" made the statement somewhat difficult to understand.

87. Ms. CHANET thanked the Netherlands delegation for its excellent report, which fully reflected the steps taken by the Netherlands to protect the rights of persons in detention. It seemed to her, however, that the report, for all its wealth of legal and theoretical matter, might have supplied more details on the practical implementation of the Convention in the Netherlands.

88. With regard to the declarations which the Netherlands had made concerning article 1 of the Convention, she asked why it had been deemed necessary to specify that the term "lawful sanctions" should be understood as referring to those sanctions which were lawful not only under national law but also under international law, a fact which surely went without saying. On the other hand, she failed to see why the Netherlands had not entered a reservation with regard to paragraph 1 (c) of article 5, which was not implemented in the Netherlands because it was contrary to Dutch legal tradition to establish criminal jurisdiction on the basis of the nationality of the victim (para. 39 of the report).

89. From paragraphs 18 and 29 it emerged that the definition of the offence of tortu e was not the same in the Convention and in Netherlands legislation, the latter being apparently more restrictive with regard to the purpose of the act and, in particular, to proof of purpose. But how could the purpose of acts of torture be proved? And did they necessarily have to be committed for the purpose of obtaining a confession (the Convention referred only to "such purposes")? It also appeared from paragraph 18 of the report that the assault had to be perpetrated on a person who had been deprived of his freedom. She would like to hear an explanation of what should be understood as "deprivation of freedom" in such a context.

90. Referring to the French text of paragraph 19 (c), she pointed out that the words "contrairement aux dispositions de l'article 44 du Code pénal" should read "conformément aux dispositions ...".

91. Lastly, paragraph 32 of the report indicated that, under certain circumstances, articles 42 and 43 of the Netherlands Criminal Code exonerated persons who committed an offence in order to implement a statutory provision. She would like to know to what extent those provisions of the Criminal Code were compatible with articles 2 and 3 of the Convention.

92. Mr. MIKHAILOV congratulated the Netherlands delegation on its excellent report which, when read together with reports from other European countries, gave the Committee a useful idea of how human rights were being observed in Europe.

93. Referring to the general conclusions of Part One of the report (para. 29), he pointed out that the definition of torture contained in article 1 of the Convention was said to employ terms "which depart from those customarily used in Dutch criminal law" and wondered how, that being so, the question of the Convention's direct implemention was being dealt with. The question just raised also applied to the more general problem of the incorporation of an international treaty in the internal law of States parties.

94. Referring to paragraph 17 of the report, he wondered why the Netherlands Government took the view that the effect of the Convention's description of the prohibited acts was "to invite interpretations based on analogy"; an explanation of that point would be welcome.

95. Noting that, according to paragraph 37 of the report, the death penalty had been abolished, that the most severe sentence was life imprisonment, and that if a determinate prison sentence was imposed, it could not exceed 20 years, he wondered whether it was possible, for example, to impose a term of imprisonment of 30 years or whether, in a case where a sentence of life imprisonment had not been pronounced, a sentence of 20 years was the heaviest that could be imposed.

96. Lastly, additional information on the subject of pre-trial detention, referred to in paragraph 43 of the report, would be useful.

97. Mr. KHITRIN associated himself with other members of the Committee who had stressed the excellence of the report, which had clearly been prepared by eminent lawyers. As to respect for the Convention's provisions, the mere fact that the Netherlands Government had promulgated a special Act implementing the Convention testified to its active commitment to efforts to combat torture.

98. Articles 43 and 44 of the Dutch Constitution, which appeared to authorize torture in certain cases, seemed to be incompatible with the Convention. Further elucidation of that point would help to remove all ambiguity.

99. The statement in paragraph 27 that "the Public Prosecutions Department may decide not to prosecute in a particular case for reasons of public interest", unaccompanied as it was by any information about the nature of those "reasons", gave rise to certain questions. It would be interesting to know, for example, whether the authorities could, for "reasons of public interest", behave as if nothing had happened even where the existence of an act of torture had been established.

100. Lastly, he wished to know the nature of the effects of section 5 of the Judiciary (Organization) Act (para. 62 of the report), which provided that

"officials of the Public Prosecutions Department shall be obliged to obey the instructions given to them in their official capacity by the competent authorities". If, for example, those officials issued an opinion which was illegal, was the President of the Court obliged to obey it?

101. Mr. GIL LAVEDRA said he believed he was expressing the view of all members of the Committee when he said that the Netherlands Government's will to respect its obligations under the Convention required no proof; the fact that the Netherlands had made the declarations provided for in articles 21 and 22 of the Convention provided further evidence, if such were needed.

102. A reading of the text of the Act implementing the Convention on Torture reproduced in annex I to the report, helped to elucidate some points which were not completely clear in the body of the text. Thus, it was expressly stated in section 3 of that Act that articles 42 and 43 of the Criminal Code did not apply to the offence of torture, a fact which was not evident from paragraph 32 of the report. Likewise, the text of the Act provided an explanation of the following passage in paragraph 14 of the report: "necessitated the drafting of a provision under which the term 'public official' would also include officials in the service of a foreign power". It would appear that an "official in the service of a foreign power" was one employed in the public administration of a foreign State. The question still remained, however, whether the point at issue was related to the concept of extraterritorial jurisdiction.

103. Paragraph 39 of the report which dealt, inter alia, with the question of the nationality of the victim, called for further explanation; it was not clear why the authors of the report had deemed it necessary to specify that it was "contrary to Dutch legal tradition to establish criminal jurisdiction on the basis of the nationality of the victim", since the Netherlands ultimately accepted the idea of universal jurisdiction. The nationality of the victim thus became wholly irrelevant, and it would be helpful to have it explained whether that passage in paragraph 39 referred to some other contingency.

104. Detailed as it was, the report was perhaps somewhat lacking in specific information on certain aspects of criminal procedure: maximum duration of pre-trial detention, possibility of being held in solitary confinement, obligation to make all arrested persons undergo a medical examination, etc. Such information was important since experience showed that it was often at that stage of deprivation of freedom that ill-treatment and brutality occurred.

105. With reference to the provisions of the Netherlands Code of Criminal Procedure whereby evidence obtained through torture could be declared null and void (paras. 74 and 75 of the report), he wondered whether article 15 of the Convention constituted a sufficient legal basis for achieving that purpose, and why the Netherlands legislature had not included a provision to that effect in the Act implementing the Convention.

106. The section of the report relating to Aruba was less informative than the rest of the document. Even the most basic information, such as that relating to legislative measures aimed at preventing torture, was not very detailed. The same was true of the organization of the judiciary in Aruba, which was, to all intents and purposes, not described at all.

107. Ms. DIAZ PALACIOS also commended the outstanding quality of the Netherlands report.

108. A question which she wished to raise was that of the powers of the national Ombudsman, to whom, according to paragraph 66 of the report, victims of torture could address complaints. In particular, she wished to know whether the institution of the Ombudsman operated as an appeals mechanism or existed in parallel with the appeals procedure available to citizens, and whether the institution also existed in Aruba.

109. The information supplied in paragraphs 67-69 on the subject of the protection of witnesses and complainants against all forms of intimidation or reprisals was very useful, but she wondered about the precise meaning of the word "explicit" in the first sentence of paragraph 69 ("It is a criminal offence to make explicit threats").

110. Mr. DIPANDA MOUELLE warmly thanked the Netherlands delegation for its report and oral introduction.

111. Noting that in the Netherlands "extradition may only take place pursuant to a treaty" (para. 49 of the report), he wondered whether, that condition notwithstanding, the Netherlands complied with article 8, paragraph 2, of the Convention, which provided that a State party which made extradition conditional on the existence of a treaty could consider the Convention as the legal basis for extradition.

112. The CHAIRMAN, speaking as a member of the Committee, associated himself with other members in emphasizing the excellent quality of the report, parts of which read like a veritable commentary on the Convention. The contents of the meticulously drafted Act implementing the Convention were also of great interest to the Committee.

113. He was not sure that he fully grasped the distinction which the Netherlands Government drew between other conventions and the Convention against Torture in connection with the implementation of article 7. In paragraph 47 of the report it was stated that "in contrast to similar provisions in earlier Conventions in which the rule aut dedere aut judicare is embodied, article 7 creates an international obligation to hand over a suspect to the competent authorities". Was that a way of saying that article 7 did not comply with the aut dedere aut judicare principle?

114. The comments relating to articles 10 and 11 of the Convention should, in his opinion, be enlarged upon.

115. It would also be interesting to know whether the European Court of Human Rights had passed judgement in the matter mentioned in paragraph 67 of the report concerning the protection of a witness who had suffered intimidation, and, if so, what the Court's decision had been.

116. With regard to damages awarded to victims of acts of torture, he asked whether the maximum amount of 1,500 guilders applied only in the case of compensation awarded by a criminal court and whether compensation awarded as a result of a civil action for redress was not subject to the same limitation.

117. In connection with article 15 of the Convention, the question arose whether it might not have been simpler to provide an explicit provision in the Act implementing the Convention; he would be interested to know the reasons why the Netherlands legislature had not deemed it appropriate to do so.

118. The section of the report dealing with Aruba was very short and required a good deal of further explanation. In the first place, he found it difficult to understand why the Dutch legislature, which evidently considered that the legislation in force at the time of accession of the Netherlands to the Convention was not adequate for the Netherlands, had promulgated a special Act for that part of the Kingdom but had not done so for Aruba.

119. The comments relating to articles 6-8 of the Convention were very sketchy and should be expanded. The same was true of the information relating to articles 10 and 11. Furthermore, paragraph 109 dealt (in somewhat summary fashion) with victims of "unjust detention", whereas article 14 of the Convention referred explicitly to victims of an act of torture. The question of State responsibility was not touched upon in connection with that article.

120. In view of the large number of questions concerning Aruba, it might be preferable to submit a supplementary report specially devoted to that country, which the Committee would consider at the same time as the report on the Netherlands Antilles.

The meeting rose at 1.05 p.m.

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Fourth session

SUMMARY RECORD OF THE 47th MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 25 April 1990, at 3 p.m.

Chairman: Mr. VOYAME (Switzerland)

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The meeting was called to order at 3.05 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 7)

Initial report of Tunisia (CAT/C/7/Add.3) (continued)

1. At the invitation of the Chairman, Mr. Abed and Mr. Fellous (Tunisia) took seats at the Committee table.

2. Mr. ABED (Tunisia) said that the questions put to his delegation had been pertinent in that they drew attention to the work which still had to be done in order to improve Tunisian legislation. He clarified the relationship between the Tunisian Constitution, international conventions and Tunisian internal law, saying that the Constitution was the basic law of the country, but gave duly ratified international agreements a legal standing higher than internal laws. Once an international agreement had been ratified by the Chamber of Deputies and published in the Journal Officiel, it became an integral part of internal law. It was true, however, that difficulties occasionally arose in applying certain provisions of international conventions: those difficulties usually concerned matters of detail in drafting the necessary decrees and regulations and putting them into force, a process which might take several months. However, Tunisian judges were experienced in drawing directly on "adopted law" in the event of a conflict with internal law and, indeed, on the Constitution itself where they found that internal law was contrary to it. In the hypothetical event of an international convention contradicting the Constitution, Tunisia would have no problem in making the necessary changes to its basic law, on the assumption that international conventions were more likely to reflect the latest developments in international law, particularly with respect to human rights. Six months must elapse from the time a draft amendment to the Constitution was presented in order to ensure that any changes took place after due consideration. Tunisia had so far experienced no major diffculties in applying international conventions and no changes in its Constitution had been required.

3. In response to a question asked by Mr. Mikhailov concerning the legal status and value of the National Agreement, he said that the Agreement was a contract freely entered into by many entities in Tunisian society, including opposition parties, social movements and other extra-parliamentary groupings. Under the Agreement a number of principles had been adopted in the interests of Tunisia's development, and no rights were prejudiced thereby. The Agreement was a reflection of the political, social and economic realities of Tunisia, which was a developing country and as such needed to summon all the strength at its disposal in order to extricate itself from underdevelopment. Democracy opened the door to the exercise of many rights and to participation, which was to be welcomed; however, in a democracy it was sometimes difficult to obtain a consensus. It was recognized, however, that a developing country could not afford, for example, to have its factories idle for months at a time in the event of a strike in pursuit of aims which had nothing to do with politics, and under the Agreement, the parties to it freely agreed to refrain from such action.

4. The political parties and social and vocational organizations which had adopted it viewed the National Agreement as a contract to bring Tunisians together in a single consensus during the decisive transition stage through which their country was passing, to place Tunisian democracy on a sound footing and to consolidate the rule of law. They recognized that that contract required a minimum of understanding and restraint. That was the spirit of the Agreement; it had no legal force.

5. Replying to a question from the Chairman, he agreed that conflicts could indeed exist between the Penal Code, the Code of Criminal Procedure and international conventions. In that connection, a reform commission composed of 10 separate bodies, had been set up to revise all such legal texts; following the dictum "It is best to leave well alone", Tunisia preferred to wait and see in order to ensure that the principles it adopted, in accordance with international conventions, reflected its needs most effectively.

6. In reply to the Chairman's question concerning article 15 of the Convention, he undertook to draw to the attention of the reform commission those provisions of Tunisian law which required to be brought into line. He could foresee no difficulty in that regard.

7. Replying to questions by Mr. Mikhailov and Mr. Khitrin, he said that in order to come into force in Tunisia, laws, including decree-laws and international conventions, must be published in the Journal Officiel. Laws were considered to come into force one day after their publication in the Journal Officiel, and there was an organ which ensured that laws were publicized, on the principle that no one should be ignorant of the law. Decree-laws were those laws passed during the parliamentary recess, and were subject to ratification when Parliament reconvened. The Convention against Torture had been ratified in January 1988 and published in the Journal Officiel on 25 October of that year.

8. In response to a question by Mrs. Diaz Palacios, he said that Tunisian law did not consider torture to be aggravated by the fact that a torturer was a public official, although intimidation by public officials was already punishable by law. His delegation had always sought to be frank in its dealings with the Committee against Torture in order that it might learn from the Committee's observations and criticisms where the weak points in Tunisian law were. He undertook to bring the Committee's criticisms on aggravating circumstances for torture to the attention of the Tunisian authorities and reform commission, and hoped to be able to send a revised text, including the necessary amendments, to the Committee in a few months. He was sure the Tunisian Government would share his view that the fact of a torturer being a public official was indeed an aggravating circumstance.

9. Replying to questions asked by Mrs. Chanet and the Chairman, he said that Tunisian law was silent on the matter of universal jurisdiction mentioned in article 5 of the Convention. Until the reform commission finished its work on harmonizing Tunisian law with the Convention and closing any loopholes, such matters would have to be decided by Tunisian judges, with reference to the precedence of international agreements over internal law.

10. In reply to Mr. Mikhailov's question concerning the principle of two jurisdictions established in Tunisian judicial law (CAT/C/7/Add.3, para. 37), he said that the principle was more philosophical than legal in tenor; as in many other countries, the system of justice had been so organized in order to guarantee people's rights and promote the interests of sound justice. The Administrative Tribunal, which was structured in the same way as the judicial courts, functioned as the court of first instance, and as the court of appeal and cassation for appeals for annulment in cases of abuse of authority and in matters of administrative litigation involving compensation, the judicial courts remaining competent to hear such litigation at first instance. The law on administrative disputes, however, dated back to 1888 and was currently undergoing much-needed revision by the reform commission.

11. In reply to a question by the Rapporteur, he said that both the judicial and administrative branches of the court system had commissions of magistrates, drawn from many sectors of society, which examined requests for legal aid. That aid was available on production of a certificate, called a "certificat d'indigence", from a responsible person stating that the person seeking aid did not have the necessary means. He was unaware of any cases in which such an application had been refused.

12. Mr. FELLOUS (Tunisia), replying to other questions asked by members, said that he would concentrate on the technical and practical details concerning the implementation of the Convention in Tunisia, and would group the questions asked under the various subjects; he undertook to provide the Committee, in writing, with any additional information it required.

13. Turning to the questions asked by Mrs. Chanet and Mrs. Diaz Palacios about the date of promulgation of the Penal Code and whether the definition of torture in article 1 of the Convention was reflected in Tunisian law, he said that the Penal Code had been promulgated in July 1913 and therefore did not fully correspond to the provisions of the Convention. Noting that the Convention none the less took precedence over Tunisian law and had been implemented immediately, he drew the Committee's attention to paragraph 62 of the report (CAT/C/7/Add.3): the concept of torture was certainly subsumed within the meaning of the term "unlawful infringement". However, express mention of torture would be made in the relevant provisions of the Penal Code when it was revised.

14. Mrs. Chanet, Mr. Gil Lavedra and Mr. Dipanda Mouelle had put questions about the rights of persons under custody orders to a medical examination, and asked at whose instigation the medical examination might be conducted and who was required to bear the cost of such an examination. Referring to article 13 bis of the Act of 26 November 1987, which had amended the Code of Criminal Procedure in respect of persons under custody orders or in pre-trial detention, he stated that the detainee himself, his immediate relatives or his spouse could make the request for a medical examination. The request must be noted in the case record, which must also show the date and time of the beginning and end of the custody order and of any interrogation. A special register must be kept at the police station or premises of the National Guard where the person was held: it must show the identity of the person held, give the date and time of the beginning and end of any custody order, be kept available to detainees, and bear the signature of the chief of police. The record must bear the signature of the person serving the custody order and, if he refused to sign, the reasons for that refusal must be stated in the record.

15. In answer to the question whether the Public Prosecutor could order a medical examination, he confirmed that the Code of Criminal Procedure did enable him to do so; the Public Prosecutor supervised all criminal justice procedures.

16. To the question who paid for the medical examination he replied that there were two answers, a theoretical one and a practical one: the theory was that the State would pay if the person did not have the means at the time he was placed under a custody order, but in practice the State paid regardless of the person's means.

17. Mr. Mikhailov had requested details of procedures for dealing with human rights violations and, more generally, for implementing the Convention. There were three relevant aspects, the first being prevention. The preventive procedure included the provisions for the special register of custody orders and for medical examinations. The second procedure had been the establishment of ad hoc arrangements within the Ministry of the Interior. The Ministry contained an Office of Public Relations to which any family member could complain about "unlawful infringements", even those as minor as improper language. That Office also received complaints about administrative abuses. A second office within the Ministry received complaints from human rights organizations, and on the basis of the complaints made to those two offices, the Ministry could take action, including legal action. The third aspect was the power of the Ministry of Justice and the Ministry of the Interior to make spot checks on police, National Guard, prison and re-education establishments and, within the administration, to monitor the observance of human rights and public freedoms.

18. In answer to Mr. Mikhailov's question about the Human Rights League, he said that the League had the legal status of a freely constituted association. Its task, under its statute, was to protect democratic freedoms and combat abuses, violence, intolerance and discrimination. Also under its statute, it visited detainees to ascertain whether their human rights were being respected, and also advised the Government on matters affecting individual rights, in consultation with the partners in the National Agreement. Despite its status as a mere association, therefore, it did have the ear of the Government and administration in matters concerning the protection of the rights, physical integrity and dignity of the individual.

19. In reply to questions by the Chairman and Mrs. Chanet concerning the number of complaints, cases brought to court and successful prosecutions for breaches of the Convention, he said that a preliminary count showed that between September 1988 and 21 April 1990 there had been 16 cases of violence and/or "unlawful infringement". Pointing out that the term "unlawful infringement" included improper language on the part of policemen or National Guardsmen, he said that seven complaints of human rights breaches had been upheld. He undertook to send the Committee unofficial translations into French of the original Arabic transcripts of those cases. He stressed the firm determination of the services overseeing implementation of the Convention to ensure that it was indeed put into effect. The cases he had mentioned were no less embarrassing for being small in number, and he assured the Committee that the sanctions imposed - which involved administrative as well as penal measures - were intended both to be exemplary and to act as a deterrent.

20. The Chairman and Mr. Sorensen had drawn attention to the use of the term "réparation" in the original French text of the report (CAT/C/7/Add.3, para. 150), whereas the term used in article 14 of the Convention was "compensation". The use of "réparation", he was sure, had been an oversight, but it was true that victims of violence or torture should have compensation rather than mere redress. It was customary in Tunisia to view the after-effects of violence or torture as being threefold: financial, moral and physical. Whereas compensation could address the first of those, hospitalization or other treatment might be required for the latter two, and discussions were taking place within the reform commission on the advisability of offering such facilities as part of the compensation awarded to victims.

21. In response to a question put by the Chairman in connection with paragraphs 150-154 of the report, he said that in accordance with the Act of 6 August 1982, the internal security forces were defined as the police, the National Guard and prison and re-education establishment staff. All the above were subordinate to the Ministry of the Interior.

22. Mr. Mikhailov, Mr. Dipanda Mouelle, Mr. Sorensen and Mr. Khitrin had asked whether instruction in human rights and the Convention was commensurate with the Committee's expectations and whether there was a plan to improve such instruction. In Tunisia, there were two training schools for internal security forces: one for officers, all of whom were required to have a degree in law, criminology or a scientific discipline; and the other for other personnel, who were required to have the school-leaving certificate (Baccalauréat). Both schools taught the concepts of human rights and public freedoms, although no course on the prohibition of torture as such had yet been introduced. At the police officers' school a lecture on the content of the Convention had been given that year by a judge.

23. He could give no immediate answer to the question why human rights teaching was given at the primary but not at the secondary level, but in a recent interview the Minister of Education had stated that the idea of such teaching at the primary level was to form a generation that was aware of human rights. At the university level there was a third-year course entitled "Public freedoms" consisting of some 40 hours of lectures which referred to all the major human rights conventions.

24. In reply to Mr. Sorensen's question about teaching for medical personnel and the army, he was unable to say what teaching was provided for the former, but at the Military Academy courses were given on human rights and the prohibition of torture.

25. Mr. Mikhailov, Mr. Burns, Mr. Dipanda Mouelle, Mr. Sorensen and Mr. Khitrin had asked what was being done to improve conditions of detention in prisons. New prison regulations had been promulgated in a decree of 4 November 1988, and as a result of various amnesties some 11,000 prisoners had been released. A number of prison doctors, psychologists, psychiatrists and warders had been recruited, but the major development brought about by the decree had been the creation of a new relationship between prisoners and the prison administration as prisoners' rights had been enshrined in law. As at 20 April 1990, there had been some 9,300 prisoners out of a total population of approximately 7 million. The overall prison area was 20,420 square metres, an average of 2.19 square metres per prisoner. He would send the Committee

statistics on persons detained in custody in police stations and by the National Guard, but could already tell members that for Greater Tunis the average area per prisoner was 7.5 square metres for the first 24 hours of custody and 3.75 square metres for the 48-hour period.

26. In reply to a question from Mrs. Diaz Palacios, he said that a child could be kept with its mother in prison for three years, and that that period could be extended, the only criterion being the interests of the child. Attention had indeed been given to the special situation of children brought up in prison and the authorities did intend to develop relevant curricula, but the major obstacle was financial. Many women prisoners with children had been released on parole for good conduct.

27. Mrs. Chanet and Mr. Gil Lavedra had asked about solitary confinement for disciplinary reasons. Tunisian legislation provided for solitary confinement not for accused persons in custody but only as a disciplinary measure for misconduct or in discipline within a prison. All guarantees were set out in article 15 of the above-mentioned decree, paragraph 7 of which provided for solitary confinement for not more than 10 days in a room with proper sanitary facilities. Prisoners could not be punished by solitary confinement without a hearing and had two days to lodge an objection to the punishment.

28. In reply to Mr. Gil Lavedra's question whether there were any substitutes for traditional penalties, he said that there were not; however, he would send the Committee a circular from the Ministry of the Interior dated 30 June 1989 establishing a commission to consider the adoption of such penalties, which would probably be included in Tunisian legislation.

29. In reply to a question by Mrs. Chanet and Mr. Burns concerning the application of the death penalty, he said the Penal Code provided that the death penalty should be carried out by hanging, that it could not be carried out on public holidays and that a pregnant woman could not be executed until after she had given birth.

30. As to Mr. Burns' question about the difference between re-educational work and forced labour, he said that re-education was a minor penalty and played a social role. It was imposed in cases of idleness and exploitation of others' resources. Such work was done in semi-open prisons, where prisoners were allowed out on certain conditions.

31. Mr. ABED (Tunisia), answering a question on the position of magistrates in Tunisia, said that there was a statutory provision under which magistrates were independent and no proceedings could be taken against them without a decision of the Judicial Service Commission, except in cases of flagrante delicto.

32. In reply to the question about the training, appointment and discpline of magistrates, he said that there was a training institute for magistrates with a four-year course of study and also special competitive examinations on certain texts. Nominations were made by the Judicial Service Commission for posts, advancement, the presidency of a chamber and the post of State Prosecutor. The Commission, which was presided over by the Head of State, also acted as a disciplinary body, and was totally independent of the executive.

33. The same procedure was followed for administrative tribunal judges, but law graduates who had followed the higher course at the National School of Administration could be appointed as deputy counsellors in the administrative tribunals. The competitive examination ensured equality of access to posts for judges.

34. In reply to a question by Mr. Burns on how foreign sentences were enforced, he said that the exequatur procedure was adopted, except where precluded for reasons of public order.

35. He was prepared to answer any other questions that members of the Committee might have, on the understanding that any statistics would have to be transmitted at a later stage.

36. Mr. SORENSEN asked whether prisoners could choose their own doctor or whether the prison doctor carried out medical examinations. In connection with paragraph 135 of the report, he inquired how many medical examinations had been carried out on the corpses of victims of violence or torture. He also wished to know whether the figure of 2.9 square metres per detainee mentioned by Mr. Fellous was cell space or whether it included office, corridor or toilet space.

37. On the question of the execution of pregnant women, he suggested that the provision that a pregnant woman should not be executed until after her delivery amounted to cruel, inhuman and degrading treatment. He therefore suggested that the Tunisian authorities should consider deleting that provision from the new Penal Code.

38. Mr. ABED (Tunisia), replying to Mr. Sorensen, said that prisoners were free to choose their own doctors for medical examinations, the fees being defrayed by the State.

39. On the question of pregnant women, the authorities had no intention of allowing indirect torture and there had always been a degree of indulgence for humanitarian reasons towards women who gave birth in prison. During the past two and a half years there had been no executions in Tunisia, and the head of State had exercised his constitutional right to commute the death sentence to a sentence of imprisonment.

40. Mr. FELLOUS (Tunisia) explained that the overall prison area in Tunisia was 20,420 square metres, which gave an average of 2.19 square metres for each of the 9,300 prisoners. That area did not include space used for kitchens, exercise yards, workshops, etc.

41. In reply to the question about the medical examination of the corpses of torture victims, he explained that that work was done by doctors in the forensic medicine service of the Ministry of Public Health. Such examinations could be carried out in any case of complaint of ill-treatment and were automatically performed in cases of possible violence and suicide at police stations.

42. The CHAIRMAN congratulated the Tunisian delegation on the developments in the area of human rights that had taken place in Tunisia since November 1987. The report was clear and informative, and he thanked the Tunisian representatives for their excellent introduction and replies to the questions asked by members of the Committee.

43. The Tunisian delegation had promised to provide answers to Mrs. Diaz Palacios' question about aggravating circumstances in connection with article 4 and to request a review of provisions relating to the implementation of article 5. There were, as the Tunisian delegation had acknowledged, still some discrepancies between the Convention and internal legislation which he hoped could be remedied as soon as possible. The question of the definition of torture raised by Mrs. Chanet also needed examination, and replies should be provided concerning the development of instruction in human rights at various levels of education, and in particular in police and army training schools and for medical staff. The legislation on the sentencing of pregnant women might not be applied in practice, but it should be adapted to take account of human rights. Replies on all those points should be provided in the next report, which was due in four years' time.

44. Members of the Committee had also asked for statistics, and the translation of decisions, on cases of torture during the past few years, on the percentage of sentenced prisoners to prisoners in pre-trial custody, and on capital punishment. He also requested more specific information on the very small area of 2.19 square metres allotted to each prisoner. He thought that figure might not be correct.

45. Mr. ABED (Tunisia) thanked the Chairman and the members of the Committee for their consideration of Tunisia's report, apologized for any omissions and expressed deep gratitude for the kind words said about his country. Despite its achievements, Tunisia was aware of the remaining problems and the authorities were determined to improve matters. They would certainly take account of the remarks made by the members of the Committee. All the documents and statistics requested would be transmitted and the next report would be as complete as possible.

46. Following the Declaration of 7 November 1987, Tunisia could well be envied for its human rights and for the adoption of principles such as the emancipation of women, equality of the sexes, democracy and tolerance. The Declaration had ushered in an era of development in all fields, and Tunisia needed encouragement in that path.

47. Mr. Abed and Mr. Fellous (Tunisia) withdrew.

Initial report of the Netherlands (CAT/C/9/Add.1) (continued)

48. At the invitation of the Chairman, the members of the Netherlands delegation took seats at the Committee table.

49. Mr. SCHUTTE (Netherlands), replying to the questions asked by Mr. Sorensen, acknowledged that the information relating to article 10 contained in paragraph 58 of the report (CAT/C/9/Add.1) was extremely succinct, but that was attributable to the very small number of practical problems that had arisen in the field of training and recruitment of police

and prison officers. Recruitment standards for such personnel were high: both police and prison officers had to undergo two years of training. Furthermore, when acting as law enforcement authorities, the police were always answerable to the Public Prosecutions Department. Any misconduct could be reported through the Ombudsman system, which issued individual reports on every complaint, together with an annual report. With regard to prison staff, his country's philosophy was to ensure the best possible relations between staff and inmates through personal contacts and mutual trust, ideally on a one-to-one basis. Prison staff were unarmed, but the risk of incidents was minimized by the high ratio of staff to prisoners. As a safeguard against abuses, prison officers carried out interrogations in pairs, and never singly.

50. With regard to the information relating to article 14 contained in paragraphs 70-73 of the Netherlands report, he said that there again, his country had little experience of devising methods of rehabilitation, since no cases of torture had arisen. With regard to existing compensation schemes, and in particular the Fund referred to in paragraph 72, the amount paid was usually related to the medical expenses incurred by the victim, particularly where he or she was uninsured. The Netherlands did have experience of traumatic psychic disturbances resulting from offences committed by the occupying forces during the Second World War, and also as a result of terrorist activities during the 1970s. The victims of those ordeals had been "rehabilitated", in Mr. Sorensen's sense of the word, and the Netherlands thus had that experience to fall back upon.

51. Mr. Burns had asked whether there were any circumstances in which persons could be held incommunicado. In the technical sense of being forbidden any contact with the outside world, that situation did not and could not arise. Prisoners were sometimes isolated as a disciplinary measure, but that sanction did not affect the right to communicate with their lawyers enjoyed by all remand prisoners, or their right to exchange letters with the judiciary, Members of Parliament, or international bodies to which there was a right of individual application. Such was the case even during the period of disciplinary isolation, which, incidentally, could last no longer than 14 days.

52. Turning to Mr. Burns' question on paragraph 38 of the report, he confirmed that there had indeed been no prosecutions in the Netherlands for acts of torture since the Second World War. With regard to police brutality, he could not claim that there had been no instances of such brutality. However, complaints usually concerned incidents in which the police had confronted demonstrators on the streets. He was aware of no instances of beatings, but there had certainly been no prosecutions on that account. Prosecutions of members of the police force usually concerned corruption or falsification of police records. Admittedly, the rate of confessions in the Netherlands was unusually high, but that was attributable, not to intimidation, but to its liberal and humane sentencing policies of which the judiciary was proud.

53. Regarding exclusion of evidence in cases where prisoners had been intimidated, he conceded that such cases might arise, although he knew of none. On the other hand, he knew of many cases where the police had exceeded their rights and competence, in such matters as searches and phone-tapping. In such cases, the evidence obtained had been excluded.

54. Mr. Burns' final question related to the Criminal Injuries Compensation Fund. There had indeed been many cases of awards being granted to individuals applying to the Fund, but such awards had always been in respect of acts committed by other private individuals, never by government officials. The annual budget of the Fund currently stood at about 2 million guilders.

55. Mrs. Chanet had observed that the report contained little information on the number of complaints received and actual cases, or on the way in which the text of the Convention was disseminated. The dearth of information was attributable to the very small number of cases that had arisen under the terms of the Convention as the Netherlands understood it. The text of the Convention was disseminated through the Official Journal; the circulars and prison regulations referred to in paragraph 59 of the report also provided information on the Convention in language accessible to the layman.

56. With regard to what Mrs. Chanet had called his country's reservation to article 1, he simply wished to state that the Netherlands had submitted a declaration, not a reservation.

57. Article 5 (1) (c) of the Convention concerned the establishment of jurisdiction on the basis of passive personality. As his country understood the text of the Convention, the obligation to establish such jurisdiction existed only if the party concerned thought it appropriate; and the Netherlands legislature held the principle of passive jurisdiction to be contrary to the basic principles of Netherlands law. Of course, the universality principle it had introduced fully covered the scope of application of the principle of passive personality.

58. A further observation concerned the definition of torture as formulated in Netherlands domestic law. His country had tried faithfully to translate the language of the Convention into the language with which practitioners of domestic law were familiar. One difficulty to which Mrs. Chanet had referred was the use of "notamment" ("such as") in article 1 of the Convention. He referred members of the Committee to his country's report for a full account of its attempt to solve that problem.

59. The deprivation of liberty seemed to his country to be a key concept. The fact that government officials had powers to detain persons, which they then abused, was precisely what made the offence so abhorrent. As formulated under Netherlands domestic law, the deprivation of liberty might have been legally or illegally ordered.

60. With regard to article 44 of the Criminal Code, paragraph 76 of the Netherlands report fully explained the meaning of that provision in relation to aggravating circumstances. The offences in question could by their very nature be committed only by officials.

61. Paragraph 32 of the Netherlands report had given rise to a number of questions. The confusion might perhaps be attributable to a mistranslation of the original English text. The first sentence of that paragraph stated that section 3 of the Act implementing the Convention against Torture stipulated that articles 42 and 43 of the Criminal Code were not applicable to the offence of torture. It went on to cite those articles, which provided a defence on the grounds of superior orders or a statutory provision in the case of other offences, but not in the case of torture.

62. Mr. Mikhailov had asked about a solution to the problem of the incompatibility between the terms of the Convention and the way in which those terms were implemented in domestic law. He felt that there was no clear answer to that question. Multilateral treaties were drafted on the basis of a lowest common denominator. Article 1 of the Convention recognized the need for each country to implement it on the basis of the definitions contained in its own domestic law. The problem of incompatibilities and discrepancies was thus in a sense insoluble. The interpretations made, in good faith, by States would inevitably lead to different results in each State. He was not sure that there was a need for a final solution to the problem, which might render the task of drafting international treaties impossible.

63. Mr. Mikhailov had asked a question regarding the opinion of the Government, as referred to in paragraph 17 of the report. It must be understood that under Netherlands constitutional law, the legislature consisted of both the Government and Parliament. A bill was presented by the Government to Parliament, together with an explanatory memorandum. Once adopted, the Act and the explanatory memorandum on it constituted a document reflecting the intention of the legislature. Thus, in the context of paragraph 17, "Government" was synonymous with "Netherlands legislature".

64. Mr. Mikhailov had also asked whether interpretations by analogy were permissible under Netherlands law. In certain circumstances, some extensive interpretation might be allowed, but analogy was not permitted.

65. With regard to the maximum duration of imprisonment in the Netherlands, provision existed for life sentences, but such sentences were never exclusive. Where such provision existed, the law also provided for a sentence of limited duration, not exceeding 20 years. For offences where no provision existed for life sentences, the maximum sentence was 15 years' imprisonment.

66. Referring to paragraph 43 of the report, Mr. Mikhailov had asked what conditions might serve to guarantee the availability of the person concerned where pre-trial detention or provisional arrest was suspended. Such measures included the requirement to surrender one's passport or to report regularly to the police.

67. With reference to paragraph 27 of the report, Mr. Khitrin had asked whether circumstances might arise in which the Public Prosecutions Department decided not to prosecute a case of torture on the grounds of public interest. In fact, there was no requirement in the Convention for mandatory prosecution for torture: States could rely on the principle of expediency, if that was a basic principle of their legal system. Nevertheless, he could not imagine any case where prosecution of torture would be excluded on such grounds.

68. In connection with paragraph 62 of the report, Mr. Khitrin had asked what would happen if the Government or the Minister of Justice gave illegal instructions to officials of the Public Prosecutions Department. The answer was that, should such a case arise, the instructions would immediately be made public by the official, thereby spelling political death for the Minister. In practice, the provision was hardly ever applied to individuals, but only to the issuance of general instructions.

69. Turning to the questions put by Mr. Gil Lavedra, he confirmed that the need for a definition of a public official was related to the obligation to establish extra-territorial jurisdiction. Up to now, the notion had been defined only with respect to Netherlands law.

70. It was his understanding that the question on the maximum period of detention related to pre-trial detention. The maximum period for such detention was 102 days from the first arrest, after which the case must be brought to court. The court was empowered to suspend the case thereafter. However, pre-trial detention was under the constant scrutiny of the judiciary. The detainee must be seen by an investigating judge within four days and again six days later. A further review must be held by a full court every 30 days thereafter, to determine whether detention on remand continued to be justified.

71. With regard to paragraphs 74 and 75 of the report, it had been asked why no specific provision existed excluding in criminal cases evidence that had been obtained through torture or similar acts. A provision (art. 338 of the Criminal Procedure Act) already existed specifying that the court must rely only on legally acquired evidence.

72. In reply to the first question asked by Mrs. Díaz Palacios, he said that the Ombudsman was appointed by Parliament after open election of candidates. The Ombudsman had his own budget, approved annually by Parliament, and was therefore financially independent. In response to her question regarding the meaning of the term "explicit threats" in paragraph 69, a phrase which did not adequately reflect the original Dutch, he said that the expression referred to actual threats to commit certain specified offences.

73. Mr. Dipanda Mouelle had asked how the Netherlands implemented article 8 of the Convention. Paragraph 51 of the report stated that the Netherlands accepted the Convention as the necessary legal basis required by the Constitution for extradition to other parties to the Convention.

74. The Chairman had asked a question about paragraph 47 and the rule aut dedere aut judicare. Article 7 (1) of the Convention contained a reference to the cases contemplated in article 5 - a reference not found in any previous similar convention, linking the cases to non-extradition to another party and not to any third State. With regard to previous conventions, there had been different interpretations as to whether the obligations under a similar article would also arise in cases where extradition was refused with respect to a third State not a party to the Convention. That situation had been settled at least in the Convention against Torture, and represented an improvement in clarity.

75. The Chairman had asked whether the European Court of Human Rights had already passed judgement on the case referred to in paragraph 67. The Judgement, dated 20 November 1989, was contained in series A, volume 166 of the Court's reports. The Netherlands had been found guilty by the Court of a breach of article 6 of the European Convention on Human Rights. The salient sentences of the decision were as follows: "The European Convention on Human Rights does not preclude reliance at the investigation stage of criminal proceedings on sources such as anonymous informants. However, the subsequent use of anonymous statements as sufficient evidence to found a conviction, as in the present case, is a different matter."

76. Lastly, in response to Mr. Burns' additional question on paragraph 68, he repeated that the creation of a new identity for threatened witnesses would be totally unacceptable in the Netherlands. His country believed that it was a gross violation of human rights to force a person to change his identity, and that it was inconceivable that a person should be required to do so in order to compel him to comply with his obligation to testify.

77. Mr. BURNS asked about the hypothetical case of a refugee from Haiti residing in the Netherlands who recognized, in the Netherlands, his former Haitian torturer. Haiti could not exercise jurisdiction, and he wondered whether the Netherlands would refuse to do so.

78. Mr. SCHUTTE (Netherlands) said that his country had recognized universal jurisdiction without any conditions. Consequently, such a case would certainly be covered. But that did not prejudice the reservations the Netherlands had with regard to the passive-personality principle of jurisdiction.

79. Mr. de VEY MESTDAGH (Netherlands) said that his country had not introduced a reservation with regard to article 1 of the Convention, but rather an interpretative declaration. It was the understanding of the Netherlands that the phrase "lawful sanctions" applied to sanctions that were lawful not only under national, but also under international law. The purpose of the declaration was to strengthen his country's obligations under universal jurisdiction. The second sentence of article 1 (1) of the Convention did not make it clear whether, in order to be lawful, a sanction must also be consistent with international law prohibiting cruel, inhuman or degrading punishment, and it might therefore be argued that certain forms of corporal punishment, including mutilation, were not covered.

80. Ms. TEEKAMP (Netherlands) referred to the case of Dutch doctors sent abroad on development programmes to countries in which corporal punishment existed. In such countries, doctors were sometimes called upon to examine detainees in order to certify whether they were fit to undergo corporal punishment. Her Government was of the opinion that those Dutch doctors who refused to conduct such examinations should receive official support, and it had therefore produced a formal declaration that could be presented to government officials of the country concerned whenever they asked Dutch doctors to perform that service. Diplomatic representatives had brought her Government's views on corporal punishment to the attention of the authorities in those countries, and reports had confirmed that Dutch doctors had been discharged from the above-mentioned duty. Although there was still some discussion whether corporal punishment was prohibited under international law and could be regarded as cruel, inhuman or degrading treatment, her Government considered that the issuing of fitness declarations by medical personnel for the purpose of corporal punishment was contrary to the Principles of Medical Ethics as proclaimed by the United Nations General Assembly in 1982 and the Tokyo Declaration of the World Medical Association of 1975.

81. There had been a tendency to ban corporal punishment in international law. Article 1 of the Convention against Torture made it clear that the definition of torture in no way affected the protection that might be derived from other international instruments or national legislation of wider

application. In 1982, the Human Rights Committee, in a comment on article 5 of the International Covenant on Civil and Political Rights, had stated that the prohibition of torture also covered corporal punishment, including excessive chastisement as an educational or disciplinary measure. It would be interesting to learn whether the Committee against Torture considered certain forms of corporal punishment, or indeed any corporal punishment at all, as being a lawful sanction falling within the application of the Convention.

82. Mr. SORENSEN referred in that context to the practice of flogging in Pakistan.

83. At the request of Mr. SORENSEN, Ms. TEEKAMP (Netherlands) said she was making available to the Committee a copy of the Netherlands declaration regarding the involvement of health personnel in certifying prisoners or detainees as being fit to undergo corporal punishment.

84. Mr. GIL LAVEDRA noted that no report had been submitted for the Netherlands Antilles; one third of the report therefore appeared to be missing.

85. The CHAIRMAN asked the delegation of the Netherlands whether it could provide more complete information on Aruba and a report on the Netherlands Antilles by 1 September so that it could be translated in time for the next session of the Committee in November 1990.

86. Mr. de VEY MESTDAGH (Netherlands) said that it could.

87. The CHAIRMAN thanked the delegation of the Netherlands for its complete and detailed report. The Committee had noted that torture did not occur in the Netherlands and that there had not even been allegations of police brutality in obtaining evidence. Certainly there were not many countries that could say as much about their police force. He wondered, however, whether the Netherlands had not placed restrictions on articles 1 and 4, especially with regard to its views on the use of "notamment" ("such as") in the text of the Convention and its suggestion to include in the Convention a reference to the deprivation of liberty. It might be useful to examine those questions.

88. The issue of corporal punishment had not yet been raised in the Committee, but it would certainly be brought up in the future.

89. The members of the Netherlands delegation withdrew.

The meeting rose at 6.25 p.m.